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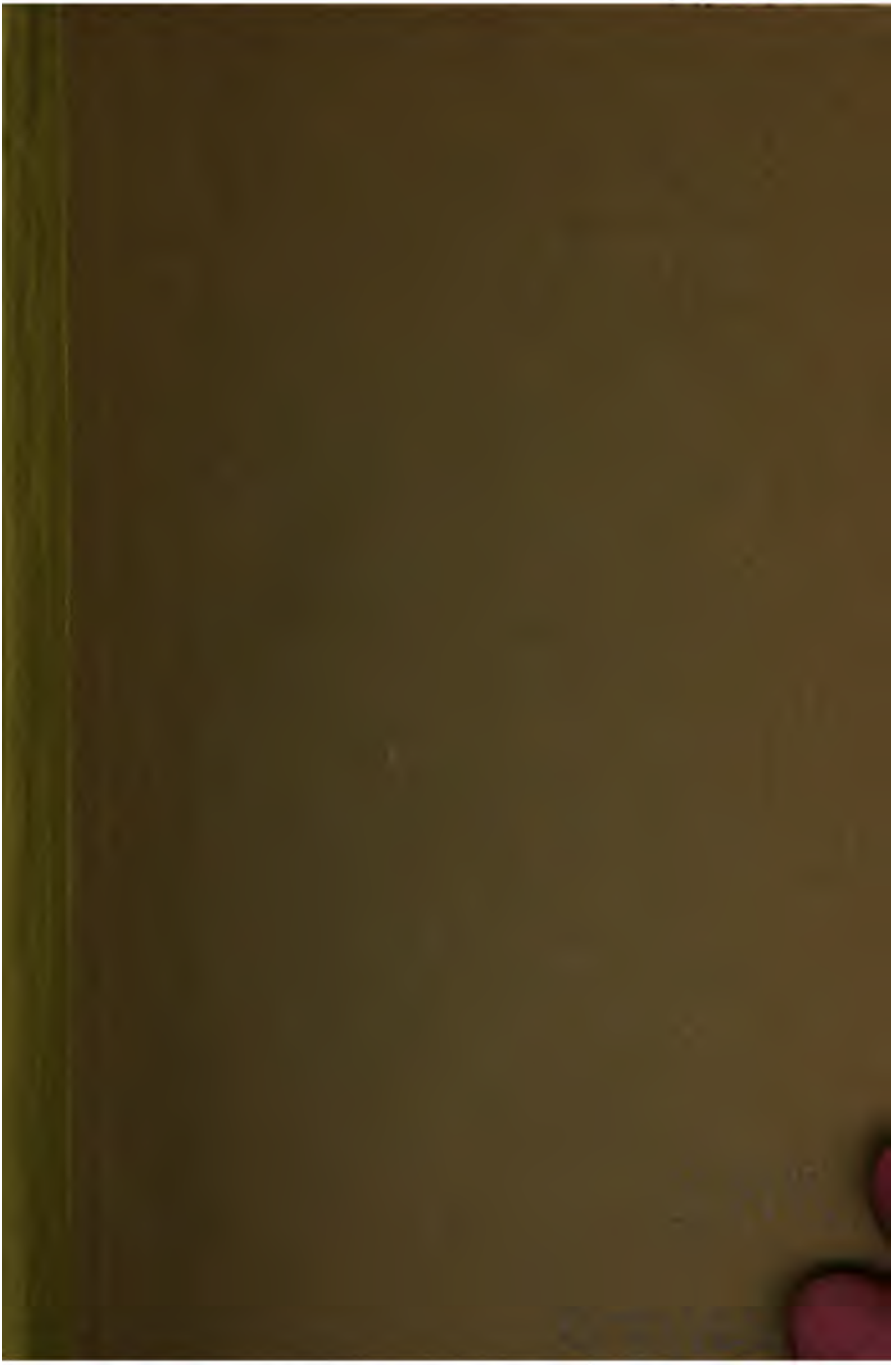

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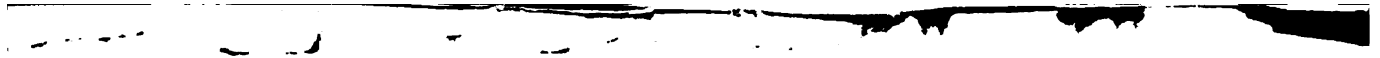

WOMAN
AND
NEW YORK LAW

Woman and the Law series of digests, published in trust for the women of the United States by the authority of the General Federation of Women's Clubs.

EDITED BY
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COLUMBIA UNIVERSITY

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WOMAN
AND
NEW YORK LAW

by
George James Bayles

THE LAW PRESS
60 MURRAY STREET
New York
1911

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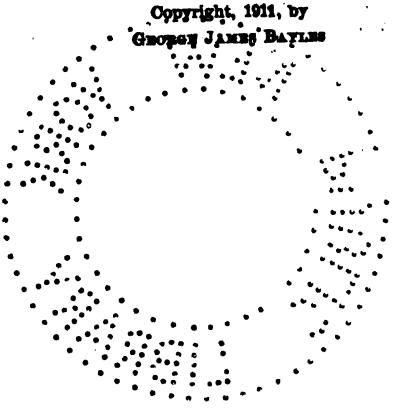

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TO MY MOTHER

A WOMAN OF NEW YORK,
THIS WORK IS
LOVINGLY DEDICATED

"And therefore women and children must be trained by education with an eye to the state, if the virtues of either of them are supposed to make any difference in the virtues of the state. And they must make a difference: for the children grow up to be citizens and half of the persons in the state are women."—ARISTOTLE.

TRANSFER FROM C. U APR 1924

FOREWORD

THE need of American women for some convenient means of securing a definite knowledge of their legal rights and obligations has been recognized by the General Federation of Women's Clubs, the most representative body of educated American women. At the convention of the Federation held in the city of Cincinnati, Ohio, in May, 1910, the following preamble and resolutions were unanimously adopted:

As it is evident:

FIRST: That the number of American women who are in the possession of property and who are called upon to have a definite knowledge of their own affairs is rapidly increasing, and

SECOND: That it is of service to every woman that she have some definite knowledge of her legal rights and obligations, and

THIRD: That the legal rights and obligations of the women of the United States are now largely matters of statute law which varies in the several States, and

FOURTH: That a presentation of the law defining the legal rights and obligations of American women should be made for each State separately;

Therefore be it Resolved:

FIRST: That the General Federation of Women's Clubs, in convention assembled, for the service that would be rendered to the women of the United States, would welcome an effort for a systematic presentation of the law relating to women in a series of State digests;

SECOND: That to further this end the President of the General Federation is hereby authorized to appoint a special committee representing the several sections of the United States with power to aid such an undertaking without incurring financial obligations for the General Federation;

THIRD: That the Presidents of the several State Federations be requested to co-operate with the said committee and also to bring the matter before the authorities of their State Federations to the end

that a series of State digests presenting the law relating to women be published under the patronage of the several State Federations.

Under the authority of these resolutions the President of the General Federation, Mrs. Philip North Moore, of St. Louis, Mo., appointed this special committee as follows: Miss Anne Rhodes, of New York, Chairman; Mrs. C. B. Alexander, of New Jersey; Mrs. F. G. Mills, of Michigan; Mrs. Whitmore, of Colorado; Mrs. F. D. Everitt, of Illinois, and Mrs. W. R. Chivvis, of Missouri.

Upon the motion of Miss Rhodes, the New York City Federation of Women's Clubs, at its convention in February, 1911, passed the following resolution:

"Resolved, That the New York City Federation hereby endorses the action of the General Federation of Women's Clubs at its last convention aiming to secure the publication of a series of digests of the law in the various States in its relation to women;

"That it will co-operate with the General Federation committee having the matter in hand in any way that shall not entail financial responsibility;

"That the City Federation hereby recommends to its members to own and study the volume when it shall appear."

The Woman and the Law series of digests has been planned by the editor to meet the requirements of these resolutions. The plan of publication has received the approval of this special committee, and therefore this series has the official sanction and endorsement of the General Federation of Women's Clubs.

It is proposed that the plates and copyrights of this series shall eventually become the property of trustees representing the General Federation who shall continue the work until the series is complete in forty-six digests, or one for each State of the Union.

INTRODUCTION

AMERICAN women are leading the women of the world in their intelligent interest in their own condition. But the proper basis for an intelligent interest in any subject is some definite knowledge of existing conditions. To make it convenient for the women of the State of New York to gain some definite knowledge of New York law as it relates to them is the object of this work.

There is nothing unwomanly in having some definite knowledge of the law, it is only common sense on the part of the women of affairs at the present time. This is no attempt to make "every woman her own lawyer," but it is an attempt to have women understand what their lawyers say to them and something about the legal system under which they live.

This digest is divided into four parts: first, the domestic relations of women; second, the property relations of women; third, the public relations of women, and fourth, the protection and correction of women. The text of the statute law is used almost entirely, and decisions of the courts interpreting the statutes are used to a considerable extent. Much of the law relating to children is included because it

is believed that it will be of great interest to women.

The women who will read this book happily will not come in contact with the penal and criminal law, but their less fortunate sisters will, so they should understand how the law is designed to protect and correct women. If some of the women who will use this digest desire to go more deeply into any particular subject as, for example, the domestic and property relations of women, they can do so by going to any law library and consulting the digests of the decisions of the courts. There they will find the principles of the common and statute law and of equity applied to a vast number of circumstances in the lives of men and women.

I ask the women who read this book to realize that the law is no dead set of ancient rules but that the law as a system is a living, growing process of society, ever aiming to regulate the lives of men and women for the greatest good to the greatest number. May the women know their law.

GEORGE JAMES BAYLES,
Editor of the Woman and the Law series of digests.

COLUMBIA UNIVERSITY,
October, 1911.

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PART I

THE DOMESTIC RELATIONS OF WOMEN

PROPERTY OF THE
CITY OF NEW YORK

WOMAN AND NEW YORK LAW

MARRIAGE

OF all the institutions of society that are regulated by the law of the land, marriage is by far the most important to women.

The best general definition of marriage is that it is the legal status of husbands and wives. It denotes the legal conditions under which a man and a woman can cohabit and have legitimate children. The State carefully guards marriage as the normal means of producing family life which, in the eyes of the law, is the fundamental institution of civilized society. The whole policy of the State is directed to keeping marriage on a high moral plane, and this chiefly for the effect upon the younger generation. Marriages are to be encouraged as well as regulated, and anything that is done in restraint of marriage is regarded as against public policy. It was once declared in the British House of Lords that to try to prevent marriage was the blackest of all political sins.

Marriage is a Civil Contract.—Marriage is frequently referred to as a civil con-

tract, but strictly speaking, marriage itself is not a contract, nor is the relation of husband and wife a contractual relation although there may be many contracts arising out of marriage. Where the phrase "civil contract" is used the object is to place the emphasis upon the word civil in order to bring out the fact that under modern law marriage is not controlled by church law as in former times.

The New York statutes declare, so far as its validity in law is concerned, marriage continues to be a civil contract, to which the consent of parties capable in law of making a contract is essential. The courts have declared that marriage is a civil contract for certain purposes, but it is not thereby synonymous with the common law or statute contract; it cannot be dissolved by the parties when consummated, nor released with or without consideration, neither can the rights, duties and obligations be transferred, and an action at law based upon a promise to marry scarcely resembles an action upon contract; an action founded upon a breach of promise to marry is personal and will not survive as against the executor of the defendant.

The Essential Elements of a Valid Marriage.—There are in law four elements

which are regarded as essential to a valid marriage.

First—Competent parties. Each of the parties to a marriage must have the capacity in law to marry the other. Thus, a woman may not be able to marry a certain man because she is too nearly related to him or because he has not the legal right to marry.

Second—The second essential element may be described as the contract to marry. The parties must agree to become husband and wife. No one can be legally married without his or her consent, no matter how competent in law the parties may be and no matter what formalities they have gone through. They must be in a mental condition at the time of the ceremony to enable them to understand what they are doing.

Third—There must be some solemnization of marriage. The parties must go through a certain formality, either civil or religious, or both.

Fourth—There must be a consummation. The parties are expected to become husband and wife in fact and to assume the marriage rights, duties and obligations.

The Contract to Marry.—There must be a real agreement between the man and the

woman to result in a valid marriage. Consent is the very essence of a marriage, and there can be no real marriage without it. A mere ceremony cannot make a man and woman husband and wife. Neither does acting as husband and wife toward each other constitute a marriage.

Consent to a marriage may be absent owing to error, fraud or duress, that is, compulsion. It should be noted that a mistake of person, but of nothing else, affects the validity of a marriage, while mistakes as to character, fortune and health make no difference, the parties taking each other for better or for worse. The practice of any deceit or false representations which induce consent, especially where the deceived person is weak in mind, or young, will invalidate a marriage. The fact that a person marries under actual compulsion will also invalidate a marriage. It is not sufficient that a woman marry unwillingly; she must have been forced by a fear of bodily harm.

The meeting of the minds which is essential to a valid marriage may be expressed in words, written or oral, or by signs or implied by conduct. No technical words are necessary. If a legal marriage is the object of the parties, any stipulations they may make which are incon-

sistent with the law are simply void. The apparent contract is not affected by a mental reservation by one of the parties. The agreement must be to be husband and wife from the time of the ceremony.

Breach of Promise to Marry.—Where the contract to marry is not performed in accordance with the agreement, there is a right of action at law. Where the contract was to marry at a certain time, suit may be brought immediately upon the renunciation of the contract before the expiration of such time, or upon the discovery that performance by one party is impossible; and where no time of performance was fixed, such an action may be brought after a reasonable time.

The fact that there was a mutual rescission of the contract is a good defense; but the plaintiff's consent to postpone the wedding day, the fact that the defendant thought the proposed marriage would not tend to the happiness of both parties, or an adjudication in a former action against the defendant for seduction, is not. A defense is good which sets up the unchastity of the plaintiff occurring and becoming known to the defendant subsequently to the promise to marry, or existing at the time of the promise and coming to the knowledge of the defendant

for the first time after such promise, if, immediately upon acquiring such knowledge, he or she repudiated the contract; but the unchastity of the plaintiff is not a defense where committed with the defendant, after the latter's engaging to marry the plaintiff, or where the defendant knew of the misconduct before the engagement, or learning it subsequently, failed to act promptly in disavowing the promise. The defendant cannot, however, take advantage of undesirable traits, conduct, characteristics, or other causes, except in mitigation of damages, unless there was a fraudulent concealment of the facts on the part of the plaintiff.

A request for a performance of the promise is not necessary before a suit may be commenced where the promise has been renounced, but where no time and place for the marriage has been fixed it is held that a breach does not occur until there has been an offer to fix a time and place for the fulfillment of the promise. An action may be brought as well by the man as the woman, but as a general rule not by the personal representative of either. A person incapacitated to marry, because a party to a subsisting and valid marriage, cannot maintain an action for a breach of a marriage promise, and a person aware

of a disability on the part of the other party which would render the marriage void cannot maintain an action on the promise made by such other party.

Under a general allegation of damages the plaintiff may recover not only an indemnity for pecuniary loss and the disappointment of reasonable expectations of an advantageous settlement in life, but also compensation for injury to feelings and affections, and mortification undergone. Where, however, the plaintiff desires to recover damages that are not the direct, natural and necessary consequences of the breach of promise, although they may be the proximate consequences, facts showing such damages must be alleged; thus, there should be special allegations of seduction under the promise, loss of health, or proper expenditures made in preparation for the marriage.

The Prohibited Degrees of Relationship. —As affecting the capacity of a woman to marry relationship of consanguinity and affinity is dependent on statute. This form of incapacity is based primarily on the laws of Moses as contained in the eighteenth chapter of the Book Leviticus, but more directly upon a statute passed by the parliament of England in the thirty-second year of the reign of King Henry VIII.

This statute confined the incapacity to all related in the ascending and descending line, and to collaterals including the third degree, civil reckoning—that is, all nearer than first cousins—and by construction the statute applied whether the relationship was by blood or marriage, whether by the whole or the half blood, whether legitimate or not. The New York statute in this matter reads as follows:

Incestuous and Void Marriages.—A marriage is incestuous and void whether the relatives are legitimate or illegitimate between either:

1. An ancestor and a descendant.
2. A brother and sister of either the whole or the half blood.
3. An uncle and niece or an aunt and nephew.

If a marriage thus prohibited be solemnized it shall be void, and the parties thereto shall each be fined not less than fifty nor more than one hundred dollars and may, in the discretion of the court in addition to such fine, be imprisoned for a term not exceeding six months. Any person who shall knowingly and wilfully solemnize such marriage, or procure or aid in the solemnization of the same, shall be deemed guilty of a misdemeanor and shall be fined and imprisoned in like manner.

The marriage of uncle and niece is not void at common law, and such a marriage before the amendment of 1893 is valid and will not be annulled.

A marriage valid under the laws of the State where it was contracted is valid in this State, and every right and privilege growing out of the relation so established attaches to each party thereto.

Void Marriages.—A marriage is absolutely void if contracted by a person whose husband or wife by a former marriage is living, unless either:

1. Such former marriage has been annulled or has been dissolved for a cause other than the adultery of such person.

2. Such former husband or wife has been finally sentenced to imprisonment for life.

3. Such former husband or wife has absented himself or herself for five successive years then last past without being known to such person to be living during that time.

A person divorced because of his or her adultery is regarded as having a husband or wife living, so long as the party obtaining the divorce lives, therefore a marriage with a person divorced because of his adultery is absolutely void unless it is contracted in a State where such a marriage

is valid, in which case the law of the place of contract must prevail.

Voidable Marriages.—A marriage is void from the time its nullity is declared by a court of competent jurisdiction if either party thereto:

1. Is under the age of legal consent, which is eighteen years;
2. Is incapable of consenting to a marriage for want of understanding;
3. Is incapable of entering into the married state from physical cause;
4. Consents to such marriage by reason of force, duress or fraud;
5. Has a husband or a wife by a former marriage living, and such former husband or wife has absented himself or herself for five successive years then last past without being known to such party to be living during that time.

Actions to annul a void or voidable marriage may be brought only as provided in the code of civil procedure.

The alleged physical incapacity must have existed at the time of the marriage and must still continue and must be incurable; mere sterility can in no case form a sufficient ground for a decree of nullity. A woman who has had her ovaries removed by surgical operation is not incapable of entering into the marriage state;

possession of the organs necessary to conception is not essential so long as there is no impediment to the indulgence of the passions. Where a wife seeks to annul the marriage on the ground of physical incapacity of the husband, the court has power to compel a surgical examination of the defendant. If a woman induce a man, whom she charges as being the putative father of her child, to marry her under the supposition that the child might be his, though she knew it was not his child, she is guilty of such fraud as to authorize the court to annul the marriage. A marriage is void on the ground of fraud where one of the parties at the time of its celebration is afflicted with a chronic, contagious and hereditary venereal disease, known to and concealed by him, especially where the marriage has not been consummated, and the marriage relation had not yet ripened into the complications of a public status, involving the consideration of questions of public policy. The fact that a woman married a man without disclosing to him her previous marriage and divorce has been held not such a fraud as would warrant an annulment of the marriage. The fact concealed from the husband that the wife, before marriage, had given birth to an illegitimate child, does not constitute

fraud. So also as to concealment by the husband of the fact of cohabitation with another woman prior to the marriage. Where a woman pretended to a man that she was pregnant by him, was not pregnant at all, and the man married her believing her statement, the marriage cannot be set aside, even though never consummated by cohabitation; the man by his own immoral acts has put himself in the power of the woman. A divorce cannot be granted for the husband's fraud in inducing the marriage by false representations as to his character and property; the woman should inform herself as to these matters and not act blindly on the man's representations.

Marriage After Divorce for Adultery.—Whenever a marriage has been or shall be dissolved, the complainant may marry again during the lifetime of the defendant; but no defendant convicted of adultery shall marry again until after the death of the complainant, unless the court in which the judgment of divorce was rendered shall in that respect modify such judgment, which modification shall only be made upon satisfactory proof that five years have elapsed since the decree of divorce was rendered, and that the conduct of the defendant since the dissolution of said marriage has been uniformly good.

But this section does not prevent the remarriage of the parties to the action.

The right to make application for leave to remarry is not synonymous with the absolute right to have the application granted; the modification should only be made where the conditions required are satisfactorily proved, so the court may order a reference to secure proofs.

Parties forbidden to marry in this State may contract a valid marriage in another State to which they may have gone solely for the purpose of such marriage, returning to this State immediately thereafter.

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such person to be living during the space of five successive years." The words "absented himself" evidently refer to a withdrawal of his whereabouts from his wife, his relatives, and from the ordinary and usual opportunities for identification; such a withdrawal from his wife and family as would, after a lapse of five successive years, lead naturally to the inference that death had ensued.

Where the wife, after the husband absents himself for five years, in good faith and supposing him to be dead, contracts a second marriage, the latter is only void after its nullity is pronounced by a court, and that only on application of one of the parties, it cannot be attacked collaterally.

By Whom a Marriage Must be Solemnized.—A marriage must be solemnized by either:

1. A clergyman or minister of any religion, or by the leader, or either of the two assistant leaders, of the Society for Ethical Culture in the Borough of Manhattan of the City of New York, or by the leader of the Society for Ethical Culture in the Borough of Brooklyn of the City of New York;

2. A mayor, recorder, alderman, city magistrate, police justice or police magistrate of a city, except that in cities which

contain more than one hundred thousand and less than one million inhabitants, a marriage shall be solemnized by the mayor or police justice, and by no other officer of such city except as provided by subdivisions one and three of this section;

3. A justice or judge of a court of record, or of a municipal court, or a justice of the peace; except that justices of the peace in cities which contain more than one hundred thousand and less than one million inhabitants, shall have no power to solemnize marriages; or,

4. A written contract of marriage signed by both parties and at least two witnesses who shall subscribe the same, stating the place of residence of each of the parties and witnesses and the date and place of marriage, and acknowledged by the parties and witnesses in the manner required for the acknowledgment of a conveyance of real estate to entitle the same to be recorded, provided, however, that all such contracts of marriage must in order to be valid be acknowledged before a judge of a court of record. Such a contract shall be recorded within six months after its execution in the office of the clerk of the county in which the marriage was solemnized.

Marriage, How Solemnized.—No particular form or ceremony is required when

a marriage is solemnized as herein provided by a clergyman or magistrate, but the parties must solemnly declare in the presence of a clergyman or magistrate and the attending witness or witnesses that they take each other as husband and wife. In every case at least one witness beside the clergyman or magistrate must be present at the ceremony.

The preceding provisions of this chapter, so far as they relate to the manner of solemnizing marriages, shall not affect marriages among people called Friends or Quakers; nor marriages among the people of any other denominations having as such any particular mode of solemnizing marriages; but such marriages must be solemnized in the manner heretofore used and practiced in their respective societies or denominations, and marriages so solemnized shall be as valid as if this article had not been enacted.

Marriage Licenses.—It shall be necessary for all persons intending to be married to obtain a marriage license from the town or city clerk of the town or city in which the woman to be married resides, and to deliver said license to the clergyman or magistrate who is to officiate before the marriage can be performed. If the woman or both parties to be married

are non-residents of the State, such license shall be obtained from the clerk of the town or city in which the marriage is to be performed.

Effect of Marriage of Parents of Illegitimates.—All illegitimate children whose parents have heretofore intermarried or who shall hereafter intermarry shall thereby become legitimatized and shall become legitimate for all purposes and entitled to all the rights and privileges of legitimate children; but an estate or interest vested or trust created before the marriage of the parents of such child shall not be divested or affected by reason of such child being legitimatized. An illegitimate child, legitimated by the subsequent marriage of its parents according to the laws of the State or country where the marriage takes place, is legitimate everywhere, and enjoys the rights derived from legitimacy, including the right of inheritance.

Common Law Marriage.—Since the first day of January, 1902, what was known as a common law marriage has not been recognized in the State of New York unless entered into through a written agreement of marriage, signed by both parties and at least two witnesses who shall subscribe to the instrument stating the place of residence of each of the parties and witnesses

and the date and place of the marriage. This agreement must be acknowledged by the parties and witnesses in the manner required for the acknowledgment of a conveyance of real estate to entitle such a conveyance to be recorded. Such an agreement must be filed within six months after its execution in the office of the clerk of the town or city in which the agreement was executed, and such a written agreement, or a certified copy, shall be presumptive evidence of the marriage.

Contracts in Contemplation of Marriage.—A contract made between persons in contemplation of marriage remains in full force after the marriage takes place.

An ante-nuptial contract for the release of dower by the future wife will be scrutinized most rigidly. The presumption is against the validity of such a contract, and the burden of proof is upon the husband to show good faith. Such a contract is properly declared void when it appears that the relinquishment of dower was not a condition of the engagement of marriage; that there was no negotiation between the parties prior thereto; that the defendant did not disclose to her that this would mean the relinquishment of her dower right; that no consideration was paid to her for the surrender, and that she

acted without the aid of counsel. An ante-nuptial contract by which the woman agreed to accept a sum in full satisfaction of her dower in her husband's estate, he agreeing to provide therefor in his will, is valid. The amount agreed to be paid by a future husband in consideration of the release of all her dower rights by his future wife is a debt within the meaning of the usual clause of a will directing the payment of debts.

A female infant is bound by a settlement of her personal estate made in contemplation of marriage; such a settlement of her real estate is voidable only by her after she becomes of age, but will not be set aside on her application during the marriage after issue born. The objection to the validity of a marriage settlement because the parties to it were infants can only be made by the parties themselves. It is not for that cause void, but merely voidable at the option of the infants upon arriving at full age.

A wife may enforce an ante-nuptial agreement in which the husband agreed to convey certain real property to the wife, and to pay her a certain sum of money. Specific performance may be had of an agreement to convey, and damages for the breach of contract to pay the money.

Ante-nuptial contracts by which it is attempted to regulate the interests which each of the parties to the marriage take in the property of the other during marriage or after death are favored by the courts and will be enforced in equity according to the intention of the parties. An ante-nuptial agreement by the future wife to release all her claims on his estate in consideration of a grossly inadequate sum made without opportunity of consulting others and in ignorance of the circumstances of the intended husband throws the burden of proof of fairness upon the representatives of the husband.

Liability of Husband for Ante-Nuptial Debts.—A husband who acquires property of his wife by ante-nuptial contract or otherwise, is liable for her debts contracted before marriage, but only to the extent of the property so acquired.

Contracts to Alter or Dissolve Marriage.—A separation agreement executed between husband and wife, when they are living together as such, is void as against public policy where it is an essential part thereof that they should thereafter separate. But otherwise as to a contract for support executed by a husband and wife who have lived apart for a number of years. A contract by a husband to sup-

port his wife made when a separation has already taken place is valid. The intervention of a third person as trustee is not necessary. If the husband and wife were living together and agreed to separate, the rule would be different.

Where by the terms of a separation agreement the wife accepts the provision in satisfaction of her support and maintenance and relieves the husband from any and all claims upon his personal property and from liability for her debts, the agreement will not be sustained on the theory that it is made to secure to the wife a legal division of the husband's property. A promise by a husband to pay money to his wife in consideration of her condoning his adultery is void as against public policy. A contract whereby a husband was to pay his wife a certain sum semi-annually which appears to have been part of a larger agreement whereby he was to assist her to procure an absolute divorce is unenforceable as against public policy.

Pardon Not to Restore Marital Rights.—A pardon granted to a person sentenced to imprisonment for life within this State does not restore that person to the rights of a previous marriage or to the guardianship of a child, the issue of such a marriage.

LIMITED DIVORCE

For What Causes Action May Be Maintained.—In either of the cases specified hereafter an action may be maintained by a husband or wife, against the other party to the marriage, to procure a judgment separating the parties from bed and board, forever or a limited time, for either of the following causes:

1. The cruel and inhuman treatment of the plaintiff by the defendant.

2. Such conduct on the part of the defendant towards the plaintiff as may render it unsafe and improper for the former to cohabit with the latter.

3. The abandonment of the plaintiff by the defendant.

4. Where the wife is plaintiff, the neglect or refusal of the defendant to provide for her.

Such an action may be maintained in either of the following cases:

1. When both parties are residents of the State when the action is commenced.

2. Where the parties were married within and the plaintiff is a resident thereof when the action is commenced.

3. Where the parties having been married without the State, have become resi-

dents of the State, and have continued to be residents thereof for at least one year; and the plaintiff is such a resident when the action is commenced.

Support of Wife and Children.—Where the action is brought by the wife, the court may, in the final judgment of separation, give such directions as the nature and circumstances of the case require. In particular, it may compel the defendant to provide suitably for the education and maintenance of the children of the marriage, and for the support of the plaintiff as justice requires, having regard to the circumstances of the respective parties. And the court may in such an action render a judgment compelling the defendant to make provision specified in the section where, under the circumstances of the case, such a judgment is proper, without rendering a judgment of separation.

Judgment for Separation May Be Revoked.—Upon the joint application of the parties, accompanied with satisfactory evidence of their reconciliation, a judgment for a separation, forever or for a limited period, rendered as prescribed in this article, may be revoked at any time by the court which rendered it, subject to such regulations and restrictions as the court thinks fit to impose.

ACTION FOR A DIVORCE

In What Cases Action May be Maintained.—In either of the following cases a husband or a wife may maintain an action against the other party to the marriage to procure a judgment divorcing the parties and dissolving the marriage, by reason of the defendant's adultery:

1. Where both parties were residents of the State when the offense was committed.
2. Where the parties were married within this State.
3. Where the plaintiff was a resident of the State when the offense was committed, and is a resident thereof when the action is commenced.
4. Where the offense was committed within the State, and the injured party, when the action is commenced, is a resident of the State.

When Divorce Denied, Although Adultery Proved.—In either of the following cases, the plaintiff is not entitled to a divorce, although the adultery is established:

1. Where the offense was committed by the procurement or with the connivance of the plaintiff.

2. Where the offense charged has been forgiven by the plaintiff. The forgiveness may be proved, either affirmatively or by the voluntary cohabitation of the parties, with the knowledge of the fact.

3. Where there has been no express forgiveness, and no voluntary cohabitation of the parties, but the action was not within five years after the discovery, by the plaintiff, of the offense charged.

4. Where the plaintiff has also been guilty of adultery under such circumstances that the defendant would have been entitled, if innocent, to a divorce.

Regulations When Action is Brought by Wife.—Where the action is brought by the wife, the following regulations apply to the proceedings:

1. The legitimacy of any child of the marriage, born or begotten before the commencement of the action, is not affected by a judgment dissolving the marriage.

2. The court may, in the final judgment dissolving the marriage, require the defendant to provide suitably for the education and maintenance of the children of the marriage, and for the support of the plaintiff, as justice requires, having regard to the circumstances of the respective parties; and may, by order, upon the application of either party to the action, and after

due notice to the other, to be given in such manner as the court shall prescribe, at any time after final judgment whether heretofore or hereafter rendered, annul, vary or modify such a direction. But no such application shall be made by the defendant unless leave to make the same shall have been previously granted by the court by order made upon or without notice as the court in its discretion may deem proper after presentation to the court of satisfactory proof that justice requires that such an application should be entertained.

3. If, when final judgment is rendered, dissolving the marriage, the plaintiff is the owner of any real property; or has, in her possession, or under her control, any personal property or thing in action which was left with her by the defendant, or acquired by her own industry, or given to her by bequest or otherwise; or if she is or may thereafter become entitled to any property by the decease of a relative intestate, the defendant shall not have any interest therein, absolute or contingent, before or after her death.

4. Where final judgment is rendered dissolving the marriage, the plaintiff's inchoate right of dower, in any real property, of which the defendant then is or was theretofore seized, is not affected by the judgment.

When Action is Brought by Husband.—Where the action is brought by the husband, the following regulations apply to the proceedings:

1. The legitimacy of a child, born or begotten before the commencement of the offense charged, is not affected by a judgment dissolving the marriage; but the legitimacy of any other child of the wife may be determined, as one of the issues in the action. In the absence of proof to the contrary, the legitimacy of all the children begotten before the commencement of the action must be presumed.

2. A judgment dissolving the marriage does not impair, or otherwise affect, the plaintiff's rights and interests in or to any real or personal property which the defendant owns or possesses, when the judgment is rendered.

3. Where judgment is rendered dissolving the marriage, the defendant is not entitled to dower in any of the plaintiff's real property, or to a distributive share in his personal property.

THE CUSTODY AND WAGES OF CHILDREN

Habeas Corpus for Child Detained by Parent.—A husband or wife, being an inhabitant of this State, living in a state of separation, without being divorced, who has a minor child, may apply to the supreme court for a writ of habeas corpus to have such minor child brought before such court; and on the return thereof, the court, on due consideration, may award the charge and custody of such child to either parent for such time, under such regulations and restrictions, and with such provisions and directions, as the case may require, and may at any time thereafter vacate or modify such order.

It is not necessary that the wife's separation from her husband is one resulting from some arrangement placing the parties in such a situation recognized by law, and technically defined and established; nor is it necessary that a case be made sufficiently strong to authorize a decree for some one of the causes mentioned in the statute relating to divorces. Where it appears that the child is not actually a resi-

dent of or within this State or not in the custody of a person who is a resident of this State, the court then has no jurisdiction to determine the question of the custody of such non-resident.

The court has held that where a mother, being the actual custodian of her child, after a divorce for abandonment, which made no disposition of the child, establishes a domicile in this State and maintains the same for four years, her civil status establishes that of the child, and that a foreign court has no power while she and the child are temporarily in that State to regulate the relations between them upon habeas corpus.

It has been held that where there is no substantial ground for a conclusion that a husband and wife, who have separated because unable to agree in their domestic relations, are not equally fit custodians of their five-year-old son, so far as the matter depends upon their personal qualities, their moral standing and their ability financially to accord to the child all that its welfare would require, the father, by reason of his paramount right in law, is entitled to the custody of the child. The law awards the custody to the father unless the welfare of the child demands an award to the mother. Where the infant

is of tender years, requiring the care and nurture of a mother, the custody may be awarded to her. The superior right of the father to the custody of his children is subject to the control of the court in two cases: first, where the father has forfeited the right by misconduct toward the child; second, where the father and mother are living apart under such circumstances as would warrant a divorce *a mensa et thoro.* In such cases the jurisdiction of the court is equitable in its character; and the welfare of the child is the chief object to be attained and must be the guide for the judgment of the court. Considerations affecting the health and morals of a child may justify the court in withholding its custody from its legal guardians.

Payment of Wages to Minor; When Valid.—Where a minor is in the employment of a person other than his parent or guardian, payment to such a minor of his wages is valid, unless such parent or guardian notify the employer in writing within thirty days after the commencement of such service, that such wages are claimed by such parent or guardian, but whenever such notice is given at any time, payments to the minor shall not be valid for services rendered thereafter.

A parent may emancipate an infant child and confer a right upon it to acquire property and possess it against all persons whatsoever, and hence may contract with such minor to pay him for services rendered to the parent.

Guardians in Socage.—When a minor for whom a general guardian of the property has not been appointed shall acquire real property, the guardianship of his property with the rights, powers and duties of a guardian in socage belongs:

1. To the father.
2. If there be no father, to the mother.
3. If there be no father or mother, to the nearest and eldest relative of full age, not under a legal incapacity; and as between relatives of the same degree of consanguinity, males shall be preferred.

The rights and authority of every such guardian shall be superseded by a testamentary or other guardian appointed in pursuance of this article.

The guardian in socage has the custody of the infant's real property, and is entitled to receive its rents and profits, lease it and recover the rents in her own name, and otherwise exercise control over such property. A mother of infants, who is their guardian in socage, may for the protection of their common interests, or for her own protection alone, purchase upon

foreclosure real estate in which they have interests, and in which she has dower rights, and may take a deed therefor in her own name, and convey a good title to a subsequent grantee.

Appointment of Guardians by Parent.— A married woman is a joint guardian of her children with her husband, with equal powers, rights and duties in regard to them. Upon the death of either father or mother, the surviving parent, whether of full age or a minor, of a child likely to be born, or of any living child under the age of twenty-one years and unmarried, may, by deed or last will, duly executed, dispose of the custody and tuition of such child during its minority or for any less time, to any person or persons. Either the father or mother may in the lifetime of them both, by last will duly executed, appoint the other the guardian of the person and property of such child, during its minority. A person appointed guardian in pursuance of this section shall not exercise the power or authority thereof unless such will is admitted to probate, or such deed executed and recorded as provided by the code of civil procedure.

Since the enactment of this section a guardian of a child cannot be appointed on the father's petition without notice to

the mother. The husband cannot lawfully give the custody of his children to a third person without the consent of his wife.

Mother and father are now equal in their rights of guardianship over their child, and therefore the mother is not confronted now, as heretofore, with the common law preference for the father. When it appears that the mother is well fitted to care for the child, its guardianship will not be given to the father, who is equally well fitted, but whose business requires him to be away from his place of residence every day.

A will in which a father leaves his property to minor children and appoints two persons to be guardians of the persons of such children, is ineffective as against the mother who survives the testator. Such an appointment is in violation of this section, which makes the mother joint guardian of her children with her husband.

It is a surviving parent only who may appoint a testamentary guardian, except that each may, in the lifetime of both, appoint by will the other as such guardian. Where the father is living, letters of testamentary guardianship will be denied to a guardian appointed by the will of a married woman to whom the care and custody of her children were awarded in an action for divorce.

Powers and Duties of Such Guardians.—Every such disposition, from the time it takes effect, shall vest in the person to whom made, if he accepts the appointment, all the rights and powers, and subject him to all the duties and obligations of a guardian of such minor, and shall be valid and effective against every other person claiming the custody and tuition of such minor, as guardian in socage or otherwise. He may take the custody and charge of the tuition of such minor, and maintain all proper actions for the wrongful taking or detention of the minor, and shall recover damages in such actions for the benefit of his ward. He shall also take the custody and management of the personal estate of such minor and the profits of his real estate, during the time for which such disposition shall have been made, and may bring such actions in relation thereto as a guardian in socage might by law.

The right of a testamentary guardian to the custody of his ward is no greater than that of the father, and the court will not, unless it is for the welfare of the child, interfere with the custody of the person to whom it was committed by the mother.

Duties and Liabilities of All General Guardians.—A general guardian or guard-

ian in socage shall safely keep the property of her ward that shall come into her custody, and shall not make or suffer any waste, sale or destruction of such property or inheritance, but shall keep in repair and maintain the houses, gardens and other appurtenances to the lands of her ward, by and with the issues and profits thereof, or with such other moneys belonging to her ward as shall be in her possession; and shall deliver the same to her ward when he comes to full age, in at least as good condition as such guardian received the same, inevitable decay and injury only excepted; and shall answer to her ward for the issues and profits of the real estate received by her, by a lawful account, to be settled before any court, judge or surrogate having authority to settle the accounts of general and testamentary guardians; and any order, judgment or decree in any action or proceeding to settle such accounts may be enforced to the same extent, and in like manner as in the case of general and testamentary guardians. If any guardian shall make or suffer any waste, sale or destruction of the inheritance of her ward, she shall lose the custody of the same, and of such ward, and shall forfeit to the ward treble damages.

Where a mother is general guardian of an infant, the mother should on the final accounting be allowed such sum as she would be allowed for the support of the child if she had made an application to the surrogate at the earliest possible date for an order fixing a sum for such purpose. A mother who secured the custody of her child on habeas corpus proceedings is not entitled to charge the expense thereof to the infant's estate upon being appointed his general guardian. Where a mother is appointed a general guardian and the child lives with its mother and stepfather in the latter's house, and the mother pays nothing for its board, she is not entitled to an allowance out of the child's estate for the board thus furnished to the child.

Guardianship of Married Woman.—The lawful marriage of a woman before she attains her majority terminates a general guardianship with respect to her person, but not with respect to her property.

Investment of Trust Funds by Guardian.—A guardian holding trust funds for investment has the powers provided by the decedent estate law for an executor or an administrator. A guardian must keep the money of her ward properly invested, and a neglect to do so renders her chargeable for interest on the unemployed funds.

Guardianship of Indigent Children by Incorporated Orphan Asylums. — The guardianship of the person and the custody of an indigent child may be committed to an incorporated orphan asylum or other institution incorporated for the care of orphan, friendless or destitute children, by an instrument in writing signed:

1. By the parents of such child, if both such parents shall then be living, or by the surviving parent, if either parent of such child be dead;

2. If either one of such parents shall have for a period of six months then next preceding abandoned such child, by the other of such parents;

3. If the father of such child shall have neglected to provide for his family during the six months next preceding, or if such child is a bastard, by the mother of such child;

4. If both parents of such child are dead, by the guardian of the person of such child lawfully appointed, with the approval of the court or officer which appointed such guardian to be entered of record;

5. If both parents of such child are dead, and no legal guardian of the person of such child has been appointed, and no such guardian has been appointed by will

or by deed or by either parent thereof, or if the parents have abandoned such child for the period of six months then next preceding, by the mayor of the city or by the county judge of the county in which asylum or such other institution is located.

THE ADOPTION OF CHILDREN.

ADOPTION of children was unknown to the common law and exists in the United States only by virtue of statute; the first general statute on this subject in New York was chapter 830 of the Laws of 1873.

Adoption is the legal act whereby an adult takes a minor into the relation of child and thereby acquires the rights and incurs the responsibilities of parent in respect to such minor. The person adopting is designated the "foster parent." A voluntary adoption is any other than that of an indigent child, or one who is a public charge from an orphan asylum or charitable institution.

An adult unmarried person, or an adult husband or wife, or an adult husband and his adult wife together, may adopt a minor in pursuance of this article, and a child shall not hereafter be adopted except in pursuance thereof. Proof of the lawful adoption of a minor heretofore made may be received in evidence, and any such adoption shall not be abrogated by the enactment of this chapter (chapter 19,

Laws of 1909), and shall have the effect of an adoption hereunder. Nothing in this article in regard to an adopted child inheriting from the foster parent applies to any will, devise or trust made or created before June twenty-fifth, eighteen hundred and seventy-three, or alters, changes or interferes with such will, devise or trust, and as to any such will, devise or trust, a child adopted before that date is not an heir so as to alter estates or trusts or devises in wills so made or created.

Whose Consent is Necessary.—Consent to adoption is necessary, as follows:

1. Of the minor, if over twelve years of age;

2. Of the foster parent's husband or wife, unless lawfully separated, or unless they jointly adopt such minor;

3. Of the parents or the surviving parent of a legitimate child, and of the mother of an illegitimate child; but the consent of a parent who has abandoned the child, or is deprived of civil rights, or divorced because of his or her adultery or cruelty, or judged to be insane, or to be an habitual drunkard, or judicially deprived of the custody of the child on account of cruelty or neglect, is unnecessary;

4. Of a person of full age having the lawful custody of the child, if any such

person can be found, where the child has no father or mother living, or no father or mother whose consent is necessary under the last subdivision. If such a child has no father or mother living, and no person can be found who has the lawful custody of the child, the judge or surrogate shall recite such facts in the order allowing the adoption.

Requisites for Voluntary Adoption.—In adoption the following requirements must be followed:

1. The foster parents or parent, the minor and all the persons whose consent is necessary under the last section, must appear before the county judge or surrogate of the county where the foster parent or parents reside, and be examined by such judge or surrogate, except as provided by the next subdivision.

2. They must present to such judge or surrogate an instrument containing substantially the consents required by this chapter, an agreement on the part of the foster parent or parents to adopt and treat the minor as his, her or their own lawful child, and a statement of the age of the child, as nearly as the same can be ascertained, which statement shall be taken prima facie as true. The instrument must be signed by the foster parent or parents

and by each person whose consent is necessary to the adoption, and severally acknowledged by said persons before such judge or surrogate; but where a parent or person or institution having the legal custody of the minor resides in some other country, state or county, his or their written acknowledged consent, or the written acknowledged consent of the officers of such institution, certified as conveyances are required to be certified to entitle them to record in a county of this State, is equivalent to his or their appearance and execution of such instrument.

The Order.—If satisfied that the moral and temporal interests of the child will be promoted thereby, the judge or surrogate must make an order allowing and confirming such adoption, reciting the reasons therefor, and directing that the minor shall thenceforth be regarded and treated in all respects as the child of the foster parent or parents. Such order and the instrument and consent, if any, mentioned in the last section must be filed and recorded in the office of the county clerk of such county.

The Effect of Adoption.—Thereafter the parents of the minor are relieved of all parental duties toward, and of all responsibility for, and have no rights over such child, or to its property by descent or suc-

cession. Where a parent who has procured a divorce, or a surviving parent, having lawful custody of a child, lawfully marries again, or where an adult unmarried person who has become a foster parent and has lawful custody of a child, marries, and such parent consents that the person who thus becomes the stepfather or the stepmother of such child may adopt such child, such parent or such foster parent, so consenting, shall not thereby be relieved of any of his or her parental duties toward, or be deprived of any of his or her rights over said child, or to his property by descent or succession. The child takes the name of the foster parent. His rights of inheritance and succession from his natural parents remain unaffected by such adoption. The foster parent or parents and the minor sustain toward each other the legal relation of parent and child, and have all the rights and are subject to all the duties of that relation, including the right of inheritance from each other, except as the same is affected by the provisions in this section in relation to adoption by a stepfather or a stepmother, and such right of inheritance extends to the heirs and next of kin of the minor, and such heirs and next of kin shall be the same as if he were the legitimate child of

the person adopting, but as respects the passing and limitation over of real or personal property dependent under the provisions of any instrument on the foster parent dying without heirs, the minor is not deemed the child of the foster parent so as to defeat the rights of remaindermen.

Abrogation of Voluntary Adoption.—A minor may be deprived of the rights of voluntary adoption by the following proceedings only:

The foster parent, the minor and the persons whose consent would be necessary to an original adoption, must appear before the county judge or surrogate of the county where the foster parent resides, who shall conduct an examination as for an original adoption. If he is satisfied that the abrogation of the adoption is desired by all parties concerned, and will be for the best interests of the minor, the foster parent, the minor, if over twelve years of age, and the persons whose consent would have been necessary to an original adoption shall execute an agreement, whereby the foster parent agrees, or whereby the foster parent and minor, if the latter is above the age of twelve years and therefore a necessary party as above required, agree to relinquish the relation of parent and child and all rights acquired

by such adoption, and the parents or guardian of the child or the institution having the custody thereof agree to resume such relation. The judge or surrogate shall endorse, upon such agreement, his consent to the abrogation of the adoption. The agreement and consent shall be filed and recorded in the office of the county clerk of the county where the foster parent resides, and a copy thereof filed and recorded in the office of the county clerk of the county where the parents or guardian reside, or such institution is located, if they reside, or such institution is located, within this State. From the time of the filing and recording thereof, the adoption shall be abrogated, and the child shall reassume its original name and the parents or guardian of the child shall reassume such relation. Such child, however, may be adopted directly from such foster parents by another person in the same manner as from parents, and as if such foster parents were the parents of such child.

PART II

THE PROPERTY RELATIONS OF WOMEN

CERTAIN RIGHTS AND LIABILITIES OF HUSBAND AND WIFE

The Property of a Married Woman.—Property, real and personal, now owned by a married woman, or hereafter owned by a woman at the time of her marriage, or acquired by her as prescribed in this chapter, and the rents, issues, proceeds and profits thereof, shall continue to be her sole and separate property as if she were unmarried, and shall not be subject to her husband's control or disposal nor liable for his debts.

The act for the protection of the property of a married woman has worked a radical change in the marital rights of the husband. His old common law right to the personal estate of the wife, and the use of her real estate, has gone. He has no estate, or interest or right whatever, absolute or contingent, except that, upon the death of the wife, after issue born, without exercising the right of disposal, a husband has the estate for his life as tenant by the courtesy. A married woman may now hold her estate for life free of all control over or power of disposal by her hus-

band, and may convey it in his lifetime or devise it by will to take effect on her death to whomsoever she pleases. The legislature intended to remove the entire disability which the common law and the statute had thrown around married women not only as regards their right to take and hold free and independently of their husbands, but also to remove the obstacles which the law had interposed against their conveying both by grant and devise, and to place them, so far as the lands which they held in their own right was concerned, on the same basis, precisely, as unmarried females.

The Legal Powers of a Married Woman. —A married woman has all the rights in respect to property, real or personal, and the acquisition, use, enjoyment and disposition thereof, and to make contracts in respect thereto with any person, including her husband, and to carry on any business, trade or occupation, and to exercise all powers and enjoy all rights in respect thereto and in respect to her contracts, and be liable on such contracts as if she were unmarried; but a husband and wife can not contract to alter or dissolve the marriage or to relieve the husband from his liability to support his wife. All sums that may be recovered in actions or special

proceedings by a married woman to recover damages to her person, estate or character shall be the separate property of the wife. Judgment for or against a married woman may be rendered and enforced in a court of record, or not of record, as if she was single.

A married woman who is possessed of a separate estate, and engaged in a separate business, may employ her husband as agent to carry on the same, and may agree with him to compensate him for his services. In such a case the wife is responsible for the acts of her husband done as her agent in the management of her estate. A married woman may appoint her husband her attorney in fact; and a conveyance of her property by him under a power of attorney given him by her is good even to carrying her dower right with it.

Responsibility of Married Women for Acts of Agents.—Married women owe the same duty to those with whom they deal and may be bound in the same manner as if unmarried; where they clothe others with apparent authority to act for them they are estopped from denying it where others have been induced to act on the faith of it. The possession of real estate by a married woman is not lost or impaired by permitting her husband to exer-

cise acts of care or agency with respect to it, or by his occupancy of it, as the head of the family, for the family residence. There is nothing in the marriage relation which forbids the wife to employ her husband as her agent in the management of her property, nor does such employment subject her property or its profits to the claims of her husband's creditors.

Liability for Torts of Husband.—A tort is a wrong upon which an action at law can be based. A married woman is liable for fraud committed by her in dealing with her separate property, or by her husband as her agent, as an individual capable in all respects of acting in her own right; but prior assent or authorization by her, or passive acquiescence at the time, does not make her liable for a tort of her husband in which she takes no active part or by which neither she nor her separate property is benefited. The circumstance that the fraud was committed by the husband, acting as the wife's agent, does not impair her liability; she is liable in the same manner for frauds or torts committed in the management of her property as she is upon contracts relating to it, and just as liable for fraudulent representations upon the sale of it as upon a covenant for quiet enjoyment; she may be sued therefor

as if a feme sole, nor need the husband be joined.

Liability of Married Woman on Promissory Notes.—A married woman is liable upon a several promissory note given by herself and husband regardless of the purposes for which the money was expended. Where a married woman procures an indorsement of a note made by her for the use of her separate estate she is liable to such indorser for the amount paid by him on her failure to pay at maturity, even if the proceeds of the note were not used for the purposes intended.

Contracts of Married Woman Not to Bind Husband.—A contract made by a married woman does not bind her husband or his property.

The husband is bound for the supply of necessaries to his wife, so long as she is not guilty of adultery or elopement. The husband may discharge this obligation by supplying her himself or by his agents, or by giving her an adequate allowance in money, in which case he is not liable to a tradesman who, without his authority, furnishes her with necessaries. Where a wife purchases groceries for the use of the family, the presumption is that she acts as the agent of the husband, and he alone is liable for the amount; but to entitle a tradesman

to recover as against the husband it must appear that the goods were supplied to the wife upon the husband's credit and the presumption that the wife was acting as her husband's agent is overcome by the fact that credit was given to her. It must be shown that the goods so furnished are suitable to the wife's position and necessary to her maintenance, and that she is not otherwise provided for. Where the husband has given a tradesman notice not to supply his wife with goods, the burden is upon the tradesman to show that the goods sold were necessary and were not provided by the husband. Where a married woman purchases groceries to be used for the family, and expressly promises to pay for the same, stating that she owns real estate, she is obliged to pay for them although she does not expressly charge her separate estate with such payment.

While, in the absence of any contract with the wife, the common law liability of the husband for her suitable support still exists, if she avails herself of the powers conferred by the statute, by making an express contract in her own name even for her necessary support, she will not be deemed as acting as agent for her husband, nor will there be an implied agreement on his part to pay for such necessaries. A

hotel-keeper may maintain a claim of lien on the property of a wife for the board of husband and wife by showing that she was the head of the family, the one trusted, and had money and credit and her husband had none. In the absence of an express agreement by the wife to charge her separate estate for medical services the legal inference is that she acts as agent of her husband.

Where husband and wife are living apart the presumption that she is authorized to charge him with purchases by her ceases; and to recover therefor the plaintiff must set up that they were necessaries, and that the husband did not supply them or furnish his wife money with which to purchase them. The rule is that during cohabitation the assent of the husband is presumed, but when they are living apart the burden is upon the person furnishing the necessities to show that the circumstances are such as to render the husband liable. The rule seems to be that the husband in case of voluntary separation has an alternative; he may trust his wife with a sufficient allowance, or he may trust her to pledge his credit for what she deems is necessary. If he trusts her with the money, he is not liable for that money; if he trusts her to buy in his name, it may be

presumed that she has the right to pledge his credit.

Where a husband abandons his wife and minor children and fails to support them, the wife has a right to bind his credit for all necessaries supplied to her and the children. Where a wife leaves her husband in consequence of his adultery, she is entitled to her support from him, and he is liable for necessaries furnished her, although he forbid all persons trusting on his account; such conduct of the husband is equivalent to turning the wife away. In a case where the wife of the defendant left him against his will and without cause and went to live with her mother, and it was shown that the defendant was able and willing to furnish her with proper maintenance if she would live with him and he never promised to maintain her separate from him, the husband was held not to be liable for necessaries furnished the wife.

Husband and Wife May Convey to Each Other or Make Partition.—Husband and wife may convey or transfer real or personal property directly, the one to the other, without the intervention of a third person; and may make partition or division of any real property held by them as tenants in common, joint tenants or tenants by the entireties. If so expressed in

the instrument of partition or division, such instrument bars the wife's right to dower in such property and also if so expressed, the husband's tenancy by courtesy.

Insurance of Husband's Life.—A married woman may, in her own name, or in the name of a third person, with his consent, as her trustee, cause the life of her husband to be insured for a definite period or for the term of his natural life. Where a married woman survives such period or term she is entitled to receive the insurance money, payable by the terms of the policy, as her separate property, and free from any claim of a creditor or representative of her husband, except, that where the premium actually paid annually out of the husband's property exceeds five hundred dollars, that portion of the insurance money which is purchased by excess of premium above five hundred dollars is primarily liable for the husband's debts. The policy may provide that the insurance, if the married woman dies before it becomes due and without disposing of it, shall be paid to her husband or to his, her, or their children, or to or for the use of one or more of those persons; and it may designate one or more trustees for a child or children to receive and manage such

money until such child or children attain full age. The married woman may dispose of such policy by will or written acknowledged assignment to take effect on her death, if she dies thereafter leaving no descendants surviving. After the will or assignment takes effect the legatee or assignee takes such policy absolutely. A policy of insurance on the life of any person for the benefit of a married woman is also assignable and may be surrendered to the company issuing the same by her, or her legal representative, with the written consent of the assured. The statute applies to policies issued by foreign insurance companies. In such cases the contract between the corporation and the assured, it seems, would be governed by the laws of the State of its origin, but the validity of the assignment depends upon the capacity of the assignor to make it under the laws of this State.

The legislature intended by this act that such policies should not be subject to the lien of creditors, either of the husband or of the wife, to the former by the expressed words of the statute, as to the latter by the determination of the courts. A creditor of the wife cannot compel her to make an assignment of the policy. But upon the husband's death and upon the

vesting in the wife of her interest in the policy no exemption attaches in favor of the wife as against her creditors before or after the money has been paid to her.

When a Married Woman is a Party.—In an action at law or a special proceeding a married woman appears, prosecutes or defends alone or joined with other parties as if she were single. It is not necessary or proper to join her husband with her as a party in any action or special proceeding affecting her separate property. The husband is not a necessary or proper party to an action or special proceeding to recover damages to the person, estate or character of his wife. The husband is not a necessary or proper party to action or special proceeding to recover damages to the person, estate or character of another on account of the wrongful acts of his wife committed without his instigation.

Right of Action By or Against Married Woman for Torts.—A married woman has a right of action for an injury to her person, property or character or for an injury arising out of the marital relation, as if unmarried. She is liable for her wrongful or tortious acts; her husband is not liable for such acts unless they were done by his actual coercion or instigation; and such coercion or instigation shall not be pre-

sumed, but must be proved. This provision does not affect any right, cause of action or defense existing before the eighteenth day of March, eighteen hundred and ninety.

Compelling Transfer of Trust Property.—A person who holds property as trustee of a married woman, under a deed of conveyance or otherwise, may, on the written request of such married woman, accompanied by a certificate of a justice of the supreme court, that he has examined the condition and situation of the property, and made inquiry into the capacity of such married woman to manage and control the same, convey to such married woman all or any portion of such property, or the rents, issues and profits thereof.

Married Woman's Right of Action for Wages.—A married woman shall have a cause of action in her own sole and separate right for all wages, salary, profits, compensation or other remuneration for which she may render work, labor or services, or which may be derived from any trade, business or occupation carried on by her, and her husband shall have no right of action therefor unless she or he with her knowledge and consent has otherwise expressly agreed with the person obligated to pay such wages, salary, profits, compen-

sation or other remuneration. In any action or proceeding in which a married woman or her husband shall seek to recover wages, salary, profits, compensation or other remuneration for which such married woman has rendered work, labor or services or which was derived from any trade, business or occupation carried on by her or in which the loss of such wages, salary, profits, compensation or other remuneration shall be an item of damage claimed by a married woman or her husband, the presumption of law in all such cases shall be that such married woman is alone entitled thereto, unless the contrary expressly appears. This provision does not affect any right, cause of action or defense existing prior to May seventeenth, nineteen hundred and five.

Right of Husband to Wife's Services.—The legislation upon the subject of the rights of married women has only resulted in abrogating their common law status to the extent set forth in the various statutes; they have not by express provision, nor by implication, deprived the husband of his common law right to avail himself of a profit or benefit from her services. A contract made between a man and a woman before they were married, which related solely to personal services to be rendered

by the woman for a consideration named, is merged in the marriage contract which implied that her services should belong to him without other compensation than support and the discharge of the marital obligations, and she can recover only for services performed to the date of the marriage.

DOWER

THE great English jurist, Lord Coke, once said: "There be three things highly favored in law—life, liberty and dower."

The estate of dower as it now exists in New York is regulated by statute, which provides as follows:

A widow shall be endowed of the third part of all the lands whereof her husband was seized of an estate of inheritance, at any time during the marriage.

Dower is one of the estates most favored by the law, and the tendency of the decisions has always been to preserve it for the wife, if this may be done. Title vested in the husband will constitute seizing within the meaning of the statute, and a widow in order to maintain an action to recover dower in certain property need not prove that her husband was in actual possession of such property. A mere trust estate of the husband is not subject to dower. A widow is entitled to dower in land conveyed by her husband according to its value at the time of alienation. She is entitled to crops growing on the land assigned to her for dower, but her claim is

subject to liens upon the property at the time when the husband became seized thereof. Where a conveyance by a husband is set aside because it was fraudulent as to his creditors, the dower interest of his wife, which was cut off by her uniting in the fraudulent deed, is restored to her, and after the death of her husband she may recover her dower in the premises.

Dower in Lands Exchanged.—If a husband seized of an estate of inheritance in lands, exchanges them for other lands, his widow shall not have dower of both, but she must make her election, to be endowed of the lands given, or of those taken in exchange; and if her election be not evinced by the commencement of an action to recover her dower of the lands given in exchange, within one year after the death of her husband, she is deemed to have elected to take her dower of the lands received in exchange. "Exchange" as used in this section means a mutual grant of equal interests, the one in consideration of the other.

Dower in Lands Mortgaged Before Marriage.—Where a person seized of an estate of inheritance in lands, executes a mortgage thereof, before marriage, his widow is, nevertheless, entitled to dower of the lands mortgaged, as against every person

except the mortgagee and those claiming under him.

Dower in Lands Mortgaged for Purchase Money.—Where a husband purchases lands during the marriage, and at the same time mortgages his estate in those lands, to secure the payment of the purchase money, his widow is not entitled to dower of those lands, as against the mortgagee or those claiming under him, although she did not unite in the mortgage. She is entitled to her dower as against every other person.

Surplus Proceeds of Sale Under Purchase-Money Mortgages.—Where, in a case specified in the last section, the mortgagee, or a person claiming under him, causes the land mortgaged to be sold, after the death of the husband, either under a power of sale contained in the mortgage, or by virtue of a judgment in an action to foreclose the mortgage, and any surplus remains, after payment of the money due on the mortgage and the costs and charges of the sale, the widow is nevertheless entitled to the interest or income of one-third part of the surplus for her life as her dower.

Widow of Mortgagee is Not Endowed.—A widow shall not be endowed of the lands conveyed to her husband by way of mortgage, unless he acquires an absolute estate therein during the marriage.

When Dower is Barred by Misconduct. —In case of a divorce, dissolving the marriage contract for the misconduct of the wife, she shall not be endowed. A divorce dissolving the marriage contract on the ground of the adultery of the husband does not deprive the wife of her right of dower in his real estate. The effect of divorces granted in other States upon the land of the husband in this State is to be determined by the laws of this State.

When Dower is Barred by Jointure.— Where an estate in real property is conveyed to a person and his intended wife, or to the intended wife alone, or to a person in trust for them or for the intended wife alone, for the purpose of creating a jointure for her, and with her assent, the jointure bars her right or claim of dower in all the lands of the husband. The assent of the wife to such a jointure is evidenced, if she be of full age, by her becoming a party to the conveyance by which it is settled; if she be a minor, by her joining with her father or guardian in that conveyance.

When Dower is Barred by Pecuniary Provisions. — Any pecuniary provision made for the benefit of an intended wife and in lieu of dower, if assented to by her as prescribed in the last section, bars her

right or claim of dower in all the lands of her husband. The widow is not bound by an ante-nuptial agreement where the husband repudiated the same in his lifetime. If there is any reasonable doubt as to whether an ante-nuptial agreement was made in lieu of dower, the widow will take both.

When a Widow is to Elect Between Jointure and Dower.—If, before the marriage, but without her assent, or if, after the marriage, real property is given or assured for the jointure of a wife, or a pecuniary provision is made for her, in lieu of dower, she must make her election whether she will take the jointure or pecuniary provision, or be endowed of the lands of her husband; but she is not entitled to both.

Her Election Between Devise and Dower.—If real property is devised to a woman, or a pecuniary or other provision is made for her by will in lieu of dower, she must make her election whether she will take the property so devised, or the provision so made, or be endowed of the lands of her husband; but she is not entitled to both.

Where a claim of dower is inconsistent with the provisions of a will, the widow is put to her election, although there is no

provision that the legacy to the wife is intended to be in lieu of dower. A widow's election is not binding unless made with full knowledge of the circumstances, and with the intention of electing.

When She is Deemed to Have Elected.—Where a woman is entitled to an election, as prescribed in either of the last two sections, she is deemed to have elected to take the jointure, devise or pecuniary provision, unless within one year after the death of her husband she enters upon the lands assigned to her for dower, or commences an action for her dower. But during such period of one year after the death of her said husband, her time to make such election may be enlarged by the order of any court competent to pass on the accounts of executors, administrators or testamentary trustees, or to admeasure dower, or on an affidavit showing the pendancy of a proceeding to contest the probate containing such jointure, devise or pecuniary provision, or of an action to construe or set aside such will, or that the amount of claims against the estate of the testator cannot be ascertained within the period so limited, or other reasonable cause, and on notice given to such persons, and in such manner, as such court may direct. Such order shall be indexed and recorded in the

same manner as a notice of pendancy of action in the office of the clerk of each county wherein the real property or a portion thereof affected thereby is situated.

The power of election is purely personal as far as a widow is concerned and does not pass to her legal representatives.

When Provision in Lieu of Dower is Forfeited.—Every jointure, devise and pecuniary provision in lieu of dower is forfeited by the woman for whose benefit it is made in a case in which she would forfeit her dower; and on such forfeiture, an estate so conveyed for jointure, or devised, or a pecuniary provision so made, immediately vests in the person or legal representative of the person in whom they would have vested on the determination of her interest therein, by her death.

Effects of the Acts of the Husband.—An act, deed or conveyance executed or performed by the husband without the assent of his wife, evidenced by her acknowledgment thereof, in the manner required by law to pass the contingent right of dower of a married woman, or a judgment or decree confessed by or recovered against him, or any laches, default, covin, or crime of a husband, does not prejudice the right of his wife to her dower or jointure, or preclude her from the recovery thereof.

It is well settled that after dower has once attached, it cannot be extinguished or suspended by any act of the husband alone in the nature of alienage or charge.

A Widow's Quarantine.—A widow may remain in the chief house of her husband forty days after his death, whether her dower is sooner assigned to her or not, without being liable to any rent for the same; and in the meantime she may have her reasonable sustenance out of the estate of her husband.

The application of this section is limited to lands in which the widow has a right or claim of dower.

A Divorced Woman May Release Dower.—A woman who is divorced from her husband, whether such divorce be absolute or limited, or granted in his or her favor, by any court of competent jurisdiction, may release to him, by an instrument in writing, sufficient to pass title to real estate, her inchoate right of dower in any specific real property theretofore owned by him, or generally in all such real property, and such as he shall thereafter acquire.

A divorce obtained by a wife in another State on the ground of cruelty, without personal service upon the husband, or his appearance in the action, is a bar to her dower in lands acquired by her husband

after the divorce or owned at that time. Having voluntarily put an end to the marriage relation for a cause deemed inadequate in this State, public policy will not be promoted by allowing her claim for dower.

Married Woman May Release Dower by Attorney.—A married woman of full age may release her inchoate right of dower in real property by attorney in fact in any case where she can personally release the same.

WILLS

A WILL is a disposition of an estate by a person called a testator (a woman who makes a will is technically known as a testatrix), to take effect upon his or her death. A woman twenty-one years of age, if of sound mind, may dispose of her real estate, and a female of the age of sixteen years may so dispose of her personal property. A married woman may devise and bequeath her property in the same manner as if unmarried. A will executed by an unmarried woman shall be deemed revoked by her subsequent marriage.

If there is such unsoundness of mind that the testator has not sufficient intelligence to understand what she is doing and the legal effect of the instrument she is executing, she is incapable of making a valid will. The great Chancellor Kent laid down the rule as follows: Neither age nor sickness nor extreme distress nor debility of body will affect the capacity to make a will if sufficient intelligence remains.

Wills shall be in writing, but special forms are not required in drawing a will; it is enough that the intention of the tes-

tator is plainly expressed. The execution of a will shall be accompanied by certain formalities which are regulated by statute, to the intent that, as the will is not to be proved until after the death of the testator, it may fully appear that in making it she was aware of the character of the instrument and was not imposed upon.

Manner of Executing a Will.—Every last will and testament of real or personal property, or both, shall be executed and attested in the following manner:

1. It shall be subscribed by the testator at the end of the will.

2. Such subscription shall be made by the testator in the presence of each of the attesting witnesses, or shall be acknowledged by him to have been so made to each of the attesting witnesses.

3. The testator, at the time of making such subscription, or at the time of acknowledging the same, shall declare the instrument so subscribed to be his last will and testament.

4. There shall be at least two attesting witnesses, each of whom shall sign his name as a witness, at the end of the will, at the request of the testator.

Witnesses to a Will to Write Names and Places of Residence.—The witnesses to any will shall write opposite to their names

their respective places of residence; and every person who shall sign the testator's name to any will by his direction, shall write his own name as a witness to the will. Whoever shall neglect to comply with either of these provisions shall forfeit fifty dollars, to be recovered by any person interested in the property devised or bequeathed, who will sue for the same. Such omission shall not affect the validity of any will; nor shall any person liable to the penalty aforesaid be excused or incapacitated on that account from testifying respecting the execution of such will.

What Wills May be Proved.—A will of real or personal property, executed as prescribed by the laws of the State, or a will of personal property executed without the State, and within the United States, the Dominion of Canada, or the Kingdom of Great Britain and Ireland, as prescribed by the laws of the state or country where it is or was executed, or a will of personal property executed by a person not a resident of the State, according to the laws of the testator's residence, may be admitted to probate in this State.

Devise or Bequest to Certain Corporations.—No person leaving a wife, or child, or parent shall devise or bequeath to any institution or corporation formed under

the Laws of 1865, chapter 368; Laws of 1875, chapter 267; Laws of 1875, chapter 343, or the Laws of 1886, chapter 236, more than one-fourth of his or her estate after payment of his or her debts, and such devise or bequest shall be valid to the extent of such one-fourth, and no such devise or bequest shall be valid in any will which shall not have been made and executed at least two months before the death of the testator.

Devise or Bequest to Certain Benevolent, Charitable and Scientific Corporations.—No person leaving a wife, or child, or parent shall devise or bequeath to any institution or corporation formed under the Laws of 1848, chapter 319, more than one-half of his or her estate, after the payment of his or her debts, and such devise or bequest shall be valid, to the extent of such one-half, and no such devise or bequest shall be valid in any will which shall not have been made and executed at least two months before the death of the testator.

Devise or Bequest to Certain Bar Associations, Veterinary Associations and Fire Corporations.—No person leaving a wife, child, or parent shall devise or bequeath to any association or corporation formed under the Laws of 1873, chapter 397; Laws of 1887, chapter 315, or Laws of 1890,

chapter 286, more than one-fourth of his or her estate, after the payment of all debts existing against said estate, and such devise or bequest shall be valid to the extent of such one-fourth only.

Mutual wills executed by husband and wife devising reciprocally to each other are valid; such an instrument operates as a separate will of whichever dies first.

Child Born After Making of Will.—Whenever a testator shall have a child born after the making of a last will, either in the lifetime or after the death of such testator, and shall die leaving such child, so after-born, unprovided for by any settlement, and neither provided for, nor in any way mentioned in such will, every such child shall succeed to the same portion of the parent's real and personal estate as would have descended or been distributed to such child if such parent had died intestate, and shall be entitled to recover the same portion from the devisees and legatees, in proportion to and out of the parts devised and bequeathed to them by such will.

Revocation and Cancellation of Written Wills.—No will in writing, except in the cases mentioned hereafter, nor any part thereof, shall be revoked, or altered, otherwise than by some other will in writing, or

some other writing of the testator, declaring such revocation or alteration, and executed with the same formalities with which the will itself was required by law to be executed; or unless such will be burnt, torn, canceled, obliterated or destroyed, with the intent and for the purpose of revoking the same, by the testator himself, or by another person in his presence, by his direction and consent; and when so done by another person, the direction and consent of the testator; and the fact of such injury or destruction shall be proved by at least two witnesses.

Revocation by Marriage and Birth of Issue.—If after the making of any will, disposing of the whole estate of the testator, such testator shall marry, and have issue of such marriage, born either in his lifetime or after his death, and the wife or the issue of such marriage shall be living at the death of the testator, such will shall be deemed revoked unless provision shall have been made for such issue by some settlement, or unless such issue shall be provided for in the will, or in such way mentioned therein, as to show an intention not to make such provision; and no other evidence to rebut the presumption of such revocation shall be received.

Will of Unmarried Woman.—A will executed by an unmarried woman shall be deemed revoked by her subsequent marriage.

A married woman who, although separated from her husband for many years, has not been divorced from him, has no domicile separate from his, and her will, although it states that she resides in this State, must be construed according to the law of the State of his residence, where the property disposed of is situated in such other State.

Who are Entitled to Letters of Administration.—Administration in case of intestacy must be granted to the relatives of the deceased entitled to succeed to his personal property, who will accept the same, in the following order:

1. To the surviving husband or wife.
2. To the children.
3. To the father.
4. To the mother.
5. To the brothers.
6. To the sisters.
7. To the grandchildren.
8. To any other next of kin entitled to share in the distribution of the estate.
9. To an executor or administrator of a sole legatee named in a will, whereby the

whole estate is devised to such deceased sole legatee.

If a person entitled is a minor, administration must be granted to his guardian, if competent, in preference to creditors or other persons. If no relative, or guardian of a minor relative, will accept the same, the letters must be granted to the creditors of the deceased; the creditor first applying, if otherwise competent, to be entitled to preference. If no creditor applies, the letters must be granted to any other person or persons legally competent. Letters of administration shall also be granted to an executor or administrator of a deceased person named as sole legatee in a will. The public administrator in the City of New York has preference after the next of kin and after an executor or administrator of a sole legatee named in a will whereby the whole estate is devised to such deceased sole legatee over creditors and all other persons. In other counties, the county treasurer shall have preference next after creditors over all other persons. If several persons of the same degree of kindred to the intestate are entitled to administration, they must be preferred in the following order: First, men to women; second, relatives of the whole blood to those of the half blood; third, unmarried women to

married. If there are several persons equally entitled to administration, the surrogate may grant letters to one or more of such persons, and administration may be granted to one or more competent persons, although not entitled to the same, with the consent of the person entitled to be joined with such person or persons; which consent must be in writing, and filed in the office of the surrogate.

THE DESCENT AND DISTRIBUTION OF PROPERTY

The General Rule of Descent.—The real property of a person who dies without devising the same shall descend:

1. To his lineal descendants;
2. To his father;
3. To his mother; and
4. To his collateral relatives.

When a Mother Inherits.—If the intestate die without descendants and leave no father, or leave a father not entitled to take the inheritance, and leave a mother and a brother or sister, or the descendant of a brother or sister, the inheritance shall descend to the mother for life, and the reversion to such brothers and sisters of the intestate as may be living, and the descendants of such as may be dead according to the same law of inheritance hereinafter provided. If the intestate in such case leave no brother or sister or descendant thereof, the inheritance shall descend to the mother in fee.

Brothers and Sisters of Father and Mother and Their Descendants and Grandparents.—If there be no heir entitled to

take, under either of the preceding sections, the inheritance, if it shall have come to the intestate on the part of the father, shall descend:

1. To the brothers and sisters of the father of the intestate in equal shares, if all be living.

2. If any be living, and any shall have died, leaving issue, to such brothers and sisters as shall be living and to the descendants of such as shall have died.

3. If all such brothers and sisters shall have died, to their descendants.

4. If there be no such brothers or sisters of such father, nor any descendants of such brothers or sisters, to the brothers and sisters of the mother of the intestate, and to the descendants of such as shall have died, or if all have died, to their descendants. But if the inheritance shall have come to the intestate on the part of his mother, it shall descend to her brothers and sisters and their descendants; and if there be none, to the brothers and sisters of the father and their descendants, in the manner aforesaid. If the inheritance has not come to the intestate on the part of either father or mother, it shall descend to the brothers and sisters both of the father and mother of the intestate, and their descendants in the same manner. In all

cases mentioned in this section the inheritance shall descend to the brothers and sisters of the intestate's father or mother, as the case may be, or to their descendants in like manner, as if they had been the brothers and sisters of the intestate.

5. If there be no such brothers or sisters or such father or mother, nor any descendants of such brothers or sisters, the inheritance, if it shall have come to the intestate on the part of his father, shall descend to his father's parents, then living, in equal parts, and if they be dead, then to his mother's parents, then living, in equal parts; but if the inheritance shall have come to the intestate on the part of his mother, it shall descend to his mother's parents, then living, in equal parts, and if they be dead, to his father's parents, then living, in equal parts. If the inheritance has not come to the intestate on the part of either father or mother, it shall descend to his living grandparents in equal parts.

Relatives of Husband or Wife.—When the inheritance shall have come to the intestate from a deceased husband or wife, as the case may be, and there be no person entitled to inherit under any of the preceding sections, then such real property of such intestate shall descend to the heirs of such deceased husband or wife, as the

case may be, and the persons entitled, under the provisions of this section, to inherit such real property, shall be deemed to be the heirs of such intestate.

Distribution of Personal Property of Decedent.—If the deceased died intestate, the surplus of his personal property after payment of debts; and if he left a will, such surplus, after the payment of debts and legacies, if not bequeathed, must be distributed to his widow, children, or next of kin, in manner following:

1. One-third part to the widow, and the residue in equal portions among the children, and such persons as legally represent the children if any of them have died before the deceased.

2. If there be no children, nor any legal representatives of them, then one-half of the whole surplus shall be allotted to the widow, and the other half distributed to the next of kin of the deceased, entitled under the provisions of this section.

3. If the deceased leaves a widow, and no descendant, parent, brother or sister, nephew or niece, the widow shall be entitled to the whole surplus; but if there be a brother or sister, nephew or niece, and no descendant or parent, the widow shall be entitled to one-half of the surplus as above provided, and to the whole of the

residue if it does not exceed two thousand dollars; if the residue exceeds that sum, she shall receive in addition to the one-half, two thousand dollars; and the remainder shall be distributed to the brothers and sisters and their representatives.

4. If there be no widow, the whole surplus shall be distributed equally to and among the children, and such as legally represent them.

5. If there be no widow, and no children, and no representatives of a child, the whole surplus shall be distributed to the next of kin, in equal degree to the deceased, and their legal representatives; and if all the brothers and sisters of the intestate be living, the whole surplus shall be distributed to them; if any of them be living and any be dead, to the brothers and sisters living, and the descendants in whatever degree of those dead; so that to each living brother or sister shall be distributed such share as would have been distributed to him or her if all the brothers and sisters of the intestate who shall have died leaving issue had been living, and so that there shall be distributed to such descendants in whatever degree, collectively, the share which their parent would have received if living; and the same rule shall prevail as to all direct lineal descendants of every brother

[illegible] sister of the intestate whenever such [illegible] are of unequal degrees.

[illegible] deceased leave no children and [illegible] representatives of them, and no father, [illegible] a widow and a mother, the half [illegible] to the widow shall be dis- [illegible] shares to his mother and [illegible] sisters, or the representatives [illegible] brothers and sisters; and if there [illegible] the whole surplus shall be [illegible] like manner to the mother, [illegible] and sisters, or the rep- [illegible] brothers and sisters.

[illegible] leave a father and no [illegible] the father shall take [illegible] a widow, and the [illegible] widow.

[illegible] leave a mother, and [illegible] brother, sister, [illegible] or sister, the [illegible] shall take one- [illegible] be no widow.

[illegible] legitimate and [illegible] or descend- [illegible] shall take the [illegible] letters of [illegible] all other [illegible] deceased [illegible] on [illegible] in the [illegible] had been

legitimate, and be entitled to letters of administration in the same order.

10. Where the descendants, or next of kin to the deceased, entitled to share in his estate, are all in equal degree to the deceased, their shares shall be equal.

11. When such descendants or next of kin are of unequal degrees of kindred, the surplus shall be apportioned among those entitled thereto, according to their respective stocks; so that those who take in their own right shall receive equal shares, and those who take by representation shall receive the share to which the parent whom they represent, if living, would have been entitled.

12. No representation shall be admitted among collaterals after brothers and sisters descendants. This subdivision shall not apply to the estate of a decedent who shall have died prior to May eighteenth, nineteen hundred and five.

13. Relatives of the half-blood shall take equally with those of the whole blood in the same degree; and the representatives of such relatives shall take in the same manner as the representatives of the whole blood.

14. Descendants and next of kin of the deceased, begotten before his death, but born thereafter, shall take in the same

manner as if they had been born in the lifetime of the deceased, and had survived him.

15. If a woman die, leaving illegitimate children, and no lawful issue, such children inherit her personal property as if legitimate.

16. If there be no husband or wife surviving and no children, and no representatives of a child, and no next of kin, then the whole surplus shall be distributed equally to and among the next of kin of the husband or wife of the deceased, as the case may be, and such next of kin shall be deemed next of kin of the deceased for all the purposes specified in this article or in chapter eighteenth of the code of civil procedure; but such surplus shall not, and shall not be construed to, embrace any personal property except such as was received by the deceased from such husband or wife, as the case may be, by will or by virtue of the laws relating to the distribution of the personal property of the deceased person.

A woman who has procured from the courts of this State a decree of absolute divorce from her husband is not, at the time of his death, his widow within the meaning of that term as used in the statute

of distribution, and is not entitled to a distributive share of his personal estate.

The Estates of Married Women.—The provisions of this article respecting the distribution of property of deceased persons apply to the personal property of married women dying, leaving descendants of them surviving. The husband of any such deceased married woman shall be entitled to the same distributive share in the personal property of his wife to which a widow is entitled in the personal property of her husband by the provisions of this article and no more.

Where a wife dies intestate and without descendants, her husband takes solely by virtue of his marital right all of her personal property, and to that extent is liable for her debts, and failing to administer, is presumed to have assets sufficient to pay them.

Action Against Husband for Debts of Deceased Wife.—If a surviving husband does not take out letters of administration on the estate of his deceased wife, he is presumed to have assets in his hands sufficient to satisfy her debts, and is liable therefor. A husband is liable as administrator for the debts of his wife only to the extent of the assets received by him. If

he dies leaving any assets of his wife unadministered, except as otherwise provided by law, they pass to his executors or administrators as part of his personal property, but are liable for her debts in preference to the creditors of the husband.

Exemption for Widow and Children.—If a man having a family die, leaving a widow or minor child or children, the following articles shall not be deemed assets, but must be included and stated in the inventory of the estate without being appraised:

1. All spinning wheels, weaving looms, one knitting machine, one sewing machine, and stoves put up or kept for use by his family.

2. The family Bible, family pictures and school-books, used by or in such family, and books not exceeding in value fifty dollars, which are kept and used as part of the family library.

3. Sheep to the number of ten, with their fleeces, and yarn and cloth manufactured from the same; one cow, two swine, and the pork of such swine, and necessary food for such swine, sheep or cow for sixty days, and all necessary provisions and fuel for such widow, child or children for sixty days after the death of such deceased person.

4. All necessary wearing apparel, beds, bedsteads and bedding, necessary cooking utensils, the clothing of the family, the clothes of the widow and her ornaments proper for her station; one table, six chairs, twelve knives and forks, twelve plates, twelve tea cups and saucers, one sugar dish, one milk pot, one tea pot and twelve spoons, and other household furniture not exceeding one hundred and fifty dollars in value.

5. Other necessary household furniture, provisions or other personal property, in the discretion of the appraisers, to the value of not exceeding one hundred and fifty dollars. Such articles and property shall remain in the possession of the widow, if there be one, during the time she lives and provides for such minor child or children. If she ceases so to do, she shall be allowed to retain as her own, her wearing apparel, her ornaments and one bed, bedstead and bedding for the same, and the property specified in subdivision five; and the other articles so exempted shall then belong to such minor child or children. If she lives with and provides for such minor child or children until it or they become of full age, all the articles and property in this section mentioned shall belong to the widow. If there be a widow

and no minor child, all the articles and property in this section mentioned shall belong to the widow. If a married woman die, leaving surviving her a husband, or a minor child or children, the same articles and personal property shall be set apart by the appraisers with the same effect for the benefit of such husband or minor child or children.

PART III

THE PUBLIC RELATIONS OF WOMEN

Citizen Women.—Women are as truly citizens of the State of New York and of the United States as are men. The right to exercise the elective franchise is not an essential element of citizenship.

An alien is a person who is not a citizen of the State in which he resides. An alien woman becomes a citizen by marrying a citizen. If a man dies after declaring his intention of becoming a citizen and before he is admitted to citizenship his widow is entitled to dower in his property.

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Under the Village Law.—At an election for the incorporation of a village by the residents of a town a woman who possesses the qualifications to vote at a town meeting, except the qualification of sex, and who has been a resident of such territory for at least thirty days next preceding such election, and who is the owner of property within such territory, which was assessed upon the last assessment roll of the town, may vote at such election.

At a village election other than that for incorporation a woman who possesses the qualifications to vote for village officers, except the qualification of sex, who is the owner of property in the village assessed upon the last preceding assessment-roll thereof, is entitled to vote upon a proposition to raise money by tax or assessment, or for the dissolution of the village.

A resident woman, who is a citizen of the United States, and of the age of twenty-one years, is eligible for the office of village clerk or deputy clerk.

Woman May Institute Proceeding.—Where a right is granted by this chapter

to institute a proceeding, make an application, present a petition, or take an appeal, such right may be exercised by an adult resident woman who owns property assessed upon the last preceding assessment-roll of the village.

Under the Town Law.—An elector of a town shall not be entitled to vote by ballot upon any proposition for the raising or appropriation of money, or the incurring of any town liability, unless he or his wife is the owner of property in the town, assessed upon the last preceding assessment-roll thereof.

When Women are Qualified to Vote.—A woman who possesses the qualifications to vote for town officers, except the qualification of sex, and who is the owner of property in the town assessed upon the last preceding assessment-roll thereof, is entitled to vote upon a proposition to raise money by tax or assessment.

Under the Education Law.—The education law of 1909 provides as follows: A person shall be entitled to vote at any school meeting for the election of school district officers, and upon all other matters which may be brought before such meeting who is:

1. A citizen of the United States.
2. Twenty-one years of age.

3. A resident within the district for a period of thirty days next preceding the meeting at which he offers to vote; and who in addition thereto possesses one of the following four qualifications:

a. Owns or hires, or is in the possession under a contract of purchase of real property in such district liable to taxation for school purposes, or

b. Is the parent of a child of school age, provided such child shall have attended the district school in the district in which the meeting is held for a period of at least eight weeks during the year preceding such school meeting, or

c. Not being the parent, has permanently residing with him a child of school age who shall have attended the district school for a period of at least eight weeks during the year preceding such meeting, or

d. Owns any personal property, assessed upon the last preceding assessment-roll of the town, exceeding fifty dollars in value, exclusive of such as is exempt from execution.

No person shall be deemed to be ineligible to vote at any such meeting, by reason of sex, who has the other qualifications required by this section.

Election and Qualifications of School Commissioners.—A school commissioner

for each school commissioner district shall be elected by the electors thereof, at the general election held each third year dating from the one held in the year eighteen hundred and ninety-six. Any person of full age, a citizen of the United States, a resident of the State, and of the county in which a school commissioner district is situated, shall be eligible to the office of school commissioner. No person shall be deemed ineligible to such office by reason of sex who has the other qualifications as herein provided.

Husband or Wife as Witness.—The husband or wife of a person indicted or accused of a crime is in all cases a competent witness, on the examination or trial of such person; but neither husband or wife can be compelled to disclose a confidential communication, made by one to the other during their marriage.

This section does not leave the matter entirely to the discretion of the witness, but the other party interested may object to any such communication.

Women as Executors.—Women may be named as executors in wills and may serve provided they have none of the following disqualifications:

1. Incapable in law of making a contract.

2. Under the age of twenty-one years.

3. Being an alien, not an inhabitant of this State.

4. Having been convicted of an infamous crime.

5. Is found by the surrogate to be incompetent to execute the duties of such trust by reason of drunkenness, dishonesty, improvidence or want of understanding. A surrogate in his discretion may refuse to grant letters testamentary or of administration to a person unable to read and write the English language.

Women as Trustees.—Women may be appointed trustees either by will or by deed to carry out the provisions of any lawful trust.

A trust may be broadly defined as an equitable obligation, either express or implied, resting upon a person by reason of a confidence imposed in him, to apply or deal with property for the benefit of some other person or persons, or for the benefit of himself and others, according to such confidence.

In a case decided by the New York court of appeals that a married woman was capable of being a trustee under the New York statute, and, having become a trustee in this State where the trust fund remained, her title thereto was not lost, but

could be enforced in New York, notwithstanding she had removed to New Jersey, where a married woman cannot be appointed a trustee.

Women as Incorporators and Directors.—There is nothing in law to prevent women acting as incorporators of corporations organized for business or other purposes. Women may also serve as the directors and officers of such corporations.

Women in the Licensed Professions.—It is now possible as far as the law is concerned for women to enter all the learned professions in which a license to practice is required by the State, such as the professions of law, medicine, osteopathy, dentistry, etc.

Women may also receive a license to operate an employment agency, and may be licensed to operate as a private detective.

REGISTRATION OF NURSES

Who May Practice as Registered Nurses. —Any resident of the State of New York, being over the age of twenty-one years and of good moral character, holding a diploma from a training school for nurses connected with a hospital or sanitarium giving a course of at least two years, and registered by the regents of the university of the State of New York as maintaining in this and other respects proper standards, all of which shall be determined by the said regents, and who shall have received from the said regents a certificate of his or her qualifications to practice as a registered nurse, shall be styled and known as a registered nurse, and no other person shall assume such title, or use the abbreviation R. N. or any other words, letters or figures to indicate that the person using the same is such a registered nurse. Before beginning to practice nursing every such registered nurse shall cause such certificate to be recorded in the county clerk's office of the county of his or her residence with an affidavit of his or her identity as the person to whom the same was so issued and

of his or her place of residence within such county. In every thirty-sixth month from the month of January, nineteen hundred and six, every registered nurse shall again cause his or her certificate to be recorded in the said county clerk's office, with an affidavit of his or her identity as the person to whom the same was issued, and of his or her place of residence at the time of such re-registration. Nothing contained in this article shall be considered as conferring any authority to practice medicine or to undertake the treatment or cure of disease in violation of article eight of this chapter.

Board of Examiners; Examination; Fees. —The board of examiners of nurses appointed pursuant to laws of nineteen hundred and three, chapter two hundred and ninety-three, is continued. The New York state nurses' association at each annual meeting shall nominate for examiners two of their members who have had not less than five years' experience in their profession. Upon the expiration of the term of office of any examiner now in office the regents of the university of the State of New York shall from the candidates so nominated fill the vacancy for a term of five years and until his or her successor is chosen. An unexpired term of an exam-

iner caused by death, resignation or otherwise, shall be filled by the regents in the same manner as an original appointment is made. The said regents, with the advice of the board of examiners above provided for, shall make rules for the examination of nurses applying for certification under this article, and shall charge for examination and for certification a fee of five dollars to meet the actual expenses, and shall report annually their receipts and expenditures under the provisions of this article, to the state comptroller, and pay the balance of receipts over expenditures to the state treasurer. The said regents may revoke any such certificate for sufficient cause after written notice to the holder thereof and hearing thereon. No person shall thereafter practice as a registered nurse under any such revoked certificate.

Waiver of Examination.—The regents of the university of the State of New York may upon the recommendation of said board of examiners, waive the examination of any persons possessing the qualifications mentioned in section two hundred and fifty, who shall have been graduated before, or who were in training on the twenty-fourth day of April, nineteen hundred and three, and shall thereafter be graduated.

Violations of This Article.—Any violation of this article shall be a misdemeanor. When any prosecution under this article is made on the complaint of the New York state nurses' association, the certificate of incorporation of which was filed and recorded in the office of the secretary of state on the second day of April, nineteen hundred and two, the fines collected shall be paid to said association and any excess in the amount of fines so paid over the expenses incurred by said association in enforcing the provisions of this article shall be paid at the end of each year to the treasurer of the State of New York.

Part IV

THE PROTECTION AND CORRECTION OF WOMEN

PROTECTION FROM ILLITERACY

REALIZING that public order and prosperity depend largely upon the trained intelligence of the mass of the people, the State of New York has enacted an education law requiring a certain attendance upon instruction, and this law applies to girls as well as to boys.

Instruction Required.—The instruction required by this law shall be:

1. At a public school in which at least the six common school branches of reading, spelling, writing, arithmetic, English language and geography are taught in English.

2. Elsewhere than a public school upon instruction in the same subjects in English by a competent teacher.

Required Attendance Upon Instruction.—1. Every child within the compulsory school ages, in proper physical and mental condition to attend school, residing in a city or school district having a population of five thousand or more and employing a superintendent of schools, shall regularly attend upon instruction as follows:

(a) Each child between seven and fourteen years of age shall attend the entire time during which the school attended is in session, which period shall not be less

than one hundred and sixty days of actual school.

(b) Each child between fourteen and sixteen years of age not regularly and lawfully engaged in any useful employment or service, and to whom an employment certificate has not been duly issued under the provisions of the labor law, shall so attend the entire time during which the school attended is in session.

2. Every such child residing elsewhere than in a city or school district having a population of five thousand or more and employing a superintendent of schools, shall attend upon instruction as many days annually between the first day of October and the following June as the public school of the district in which such child resides shall be in session during such period as follows:

(a) Each child between eight and fourteen years of age.

(b) Each child between fourteen and sixteen years of age not regularly and lawfully engaged in any useful employment or service.

The Unlawful Employment of Children. —It shall be unlawful for any person, firm or corporation:

1. To employ any child under fourteen years of age, in any business or service

whatever, for any part of the term during which the public schools of the district or city in which the child resides are in session.

2. To employ, elsewhere than in a city of the first class or a city of the second class, in a factory or mercantile establishment, business or telegraph office, restaurant, hotel, apartment house or in the distribution or transmission of merchandise or messages, any child between fourteen and sixteen years of age who does not at the time of such employment present an employment certificate duly issued under the provisions of the labor law, or to employ any such child in any other capacity who does not at the time of such employment present a school record certificate as provided by the education law.

3. To employ any child between fourteen and sixteen years of age in a city of the first class or in a city of the second class who does not, at the time of such employment, present an employment certificate, duly issued under the provisions of the labor law.

No Exclusion on Account of Race or Color.—No person shall be refused admission into or be excluded from any public school in the State of New York on account of race or color.

EMPLOYMENT OF WOMEN AND CHILDREN IN MERCANTILE ESTABLISHMENTS

Application of Article.—The provisions of this article shall apply to all villages and cities which at the last preceding state enumeration had a population of three thousand or more.

Hours of Labor of Minors.—No child under the age of sixteen years shall be employed, permitted or suffered to work in or in connection with any mercantile establishment, business office, or telegraph office, restaurant, hotel, apartment house, bowling alley, or in the distribution or transmission of merchandise, articles or messages, or in the distribution or sale of articles or as a messenger, usher or checker in places of amusement, more than fifty-four hours in any one week, or more than nine hours in any one day, or before eight o'clock in the morning or after seven o'clock in the evening of any day. No female employee between sixteen and twenty-one years of age shall be required, permitted or suffered to work in or in connection with any mercantile establishment

more than sixty hours in any one week; or more than ten hours in any one day, unless for the purpose of making a shorter work day of some one day of the week; or before seven o'clock in the morning or after ten o'clock in the evening of any day. This section does not apply to the employment of persons sixteen years of age or upward between the eighteenth day of December and the following twenty-fourth day of December, both inclusive. Not less than forty-five minutes shall be allowed for the noonday meal of the employees of any such establishment. Whenever any employee is employed or permitted to work after seven o'clock in the evening, such employee shall be allowed at least twenty minutes to obtain lunch or supper between five and seven o'clock in the evening.

Employment of Children.—No child under the age of fourteen years shall be employed or permitted to work in or in connection with any mercantile or other business or establishment specified in the preceding section, except that a child upward of twelve years of age may be employed therein in villages and cities of the second or third class, during the summer vacation of the public schools of the city or district where such establishment is situated. No child under the age of sixteen

years shall be so employed or permitted to work unless an employment certificate, issued as provided in this article, shall have been theretofore filed in the office of the employer at the place of employment of such child.

Employment Certificate; How Issued.—Such certificate shall be issued by the commissioner of health or the executive officer of the board or department of health of the city, town or village where such child resides or is to be employed, or by such officer thereof as may be designated by such board, department or commissioner for that purpose, upon the application of the parent, guardian or custodian of the child desiring such employment. Such officer shall not issue such certificate until he has received, examined, approved and filed the following papers duly executed, viz.: The school record of such child properly filled out and signed as provided in this article; also, evidence of age showing that the child is fourteen years old or upwards, which shall consist of the evidence thereof provided in one of the following subdivisions of this section and which shall be required in the order herein designated as follows:

(a) Birth Certificate.—A duly attested transcript of the birth certificate filed ac-

cording to law with a registrar of vital statistics or other officer charged with the duty of recording births, which certificate shall be conclusive evidence of the age of such child.

(b) Certificate of Graduation.—A certificate of graduation duly issued to such child showing that such child is a graduate of a public school of the State of New York or elsewhere, having a course of not less than eight years, or of a school in the State of New York other than a public school, having a substantially equivalent course of study of not less than eight years' duration, in which a record of the attendance of such child has been kept as required by article twenty of the education law, provided that the record of such school shows such child to be at least fourteen years of age.

(c) Passport or Baptismal Certificate.—A passport or a duly attested transcript of a certificate of baptism showing the date of birth and place of baptism of such child.

(d) Other Documentary Evidence.—In case it shall appear to the satisfaction of the officer to whom application is made, as herein provided, for an employment certificate, that a child for whom such certificate is requested and who has presented the school record, is in fact over fourteen

years of age, and that satisfactory documentary evidence of age can be produced, which does not fall within any of the provisions of the preceding subdivisions of this section, and that none of the papers mentioned in said subdivisions can be produced, then and not otherwise he shall present to the board of health of which he is an officer or agent, for its action thereon, a statement signed by him showing such facts together with such affidavits or papers as may have been produced before him constituting such evidence of the age of such child, and the board of health, at a regular meeting thereof, may then, by resolution, provide that such evidence of age shall be fully entered on the minutes of such board, and shall be received as sufficient evidence of the age of such child for the purpose of this section.

(e) Physicians' Certificates.—In cities of the first class only, in case application for the issuance of an employment certificate shall be made to such officer by a child's parent, guardian or custodian who alleges his inability to produce any of the evidence of age specified in the preceding subdivisions of this section, and if the child is apparently at least fourteen years of age, such officer may receive and file an application signed by the parent, guardian

or custodian of such child for physicians' certificates. Such application shall contain the alleged age, place and date of birth, and present residence of such child, together with such further facts as may be of assistance in determining the age of such child. Such application shall be filed for not less than ninety days after date of such application for such physicians' certificates, for an examination to be made of the statements contained therein, and in case no facts appear within such period or by such examination tending to discredit or contradict any material statement of such application, then and not otherwise the officer may direct such child to appear thereafter for physical examination before two physicians officially designated by the board of health, and in case such physicians shall certify in writing that they have separately examined such child and that in their opinion such child is at least fourteen years of age, such officer shall accept such certificates as sufficient proof of the age of such child for the purposes of this section. In case the opinions of such physicians do not concur, the child shall be examined by a third physician, and the concurring opinions shall be conclusive for the purpose of this section as to the age of such child.

Such officer shall require the evidence of age specified in subdivision (a) in preference to that specified in any subsequent subdivision and shall not accept the evidence of age permitted by any subsequent subdivision unless he shall receive and file in addition thereto an affidavit of the parent showing that no evidence of age specified in any preceding subdivision or subdivisions of this section can be produced. Such affidavit shall contain the age, place and date of birth, and present residence of such child, which affidavit must be taken before the officer issuing the employment certificate, who is hereby authorized and required to administer such oath and who shall not demand or receive a fee therefor. Such employment certificate shall not be issued until such child shall further have personally appeared before and been examined by the officer issuing the certificate, and until such officer shall, after making such examination, sign and file in his office a statement that the child can read and legibly write simple sentences in the English language, and that in his opinion the child is fourteen years of age or upwards and has reached the normal development of a child of its age, and is in sound health and is physically able to perform the work which it

intends to do. In doubtful cases such physical fitness shall be determined by a medical officer of the board or department of health. Every such employment certificate shall be signed in the presence of the officer issuing the same, by the child in whose name it is issued.

Contents of Certificate.—Such certificate shall state the date and place of birth of the child, and describe the color of hair and eyes and the height and weight and any distinguishing facial marks of such child, and that the papers required by the preceding section have been duly examined, approved and filed and that the child named in such certificate has appeared before the officer signing the certificate and been examined.

School Record, What to Contain.—The school record required by this article shall be signed by the principal or chief executive officer of the school which such child has attended and shall be furnished on demand to a child entitled thereto or to the board, department or commissioner of health. It shall contain a statement certifying that the child has regularly attended the public schools or schools equivalent thereto or parochial schools for not less than one hundred and thirty days during the twelve months next preceding his four-

teenth birthday, or during the twelve months next preceding his application for such school record, and is able to read and write simple sentences in the English language, has received during such period instruction in reading, spelling, writing, English grammar and geography and is familiar with the fundamental operations of arithmetic up to and including fractions. Such school record shall also give the date of birth and residence of the child as shown on the records of the school and the name of its parents or guardian or custodian.

Summer Vacation Certificate.—Children of the age of twelve years or more who can read and write simple sentences in the English language may be employed in mercantile and other establishments specified in section one hundred and sixty-one, in villages and cities of the third class during the summer vacation of the public schools in the city or school district where such children reside, upon obtaining the vacation certificate herein provided. Such certificate shall be issued in the same manner, upon the same conditions, and on like proof that such child is twelve years of age or upwards, and is in sound health, as are required for the issuance of an employment certificate under this article, except

that a school record of such child shall not be required. The certificates provided for in this section shall be designated summer vacation certificates, and shall correspond in form and substance as nearly as practicable to such employment certificate, and shall in addition thereto specify the time in which the same shall remain in force and effect, which in no case shall be other than the time in which the public schools where such children reside are closed for a summer vacation.

Registry of Children Employed.—The owner, manager or agent of a mercantile or other establishment employing children shall keep, or cause to be kept, in the office of such establishment, a register, in which shall be recorded the name, birthplace, age and place of residence of all children so employed under the age of sixteen years. Such register and the certificate filed in such office shall be produced for inspection, upon the demand of an officer of the board, department or commissioner of health of the town, village or city where such establishment is situated, or if such establishment is situated in a city of the first class upon the demand of the commissioner of labor. On termination of the employment of the child so registered and whose certificate is so filed, such certificate shall be

forthwith surrendered by the employer to the child or its parent or guardian or custodian. An officer of the board, department or commissioner of health of the town, village or city where a mercantile or other establishment mentioned in this article is situated, or if such establishment is situated in a city of the first class the commissioner of labor, may make demand on an employer in whose establishment a child apparently under the age of sixteen years is employed or permitted or suffered to work, and whose employment certificate is not then filed as required by this chapter, that such employer shall either furnish him, within ten days, evidence satisfactory to him that such child is in fact over sixteen years of age, or shall cease to employ or permit or suffer such child to work in such establishment. The officer may require from such employer the same evidence of age of such child as is required on the issuance of an employment certificate; and the employer furnishing such evidence shall not be required to furnish any further evidence of the age of the child. A notice embodying such demand may be served on such employer personally or may be sent by mail addressed to him at said establishment, and if served by post shall be deemed to have been served

at the time when the letter containing the same would be delivered in the ordinary course of the post. When the employer is a corporation such notice may be served either personally upon an officer of such corporation, or by sending it by post addressed to the office or the principal place of business of such corporation. The papers constituting such evidence of age furnished by the employer in response to such demand shall, except in cities of the first class, be filed with the board, department or commissioner of health, and in cities of the first class with the commissioner of labor, and a material false statement made in any such paper or affidavit by any person shall be a misdemeanor. In case such employer shall fail to produce and deliver to the officer of the board, department or commissioner of health, or in cities of the first class to the commissioner of labor, within ten days after such demand such evidence of age herein required by him, and shall thereafter continue to employ such child or permit or suffer such child to work in such mercantile or other establishment, proof of the giving of such notice and of such failure to produce and file such evidence shall be prima facie evidence in any prosecution brought for a violation of this article that such child is

under sixteen years of age and is unlawfully employed.

Wash-Rooms and Water-Closets.—Suitable and proper wash-rooms and water-closets shall be provided in, adjacent to or connected with mercantile establishments where women and children are employed. Such rooms and closets shall be so located and arranged as to be easily accessible to the employees of such establishments.

Such water-closets shall be properly screened and ventilated, and at all times kept in a clean condition. The water-closets assigned to the female employees of such establishments shall be separate from those assigned to the male employees.

If a mercantile establishment has not provided wash-rooms and water-closets, as required by this section, the board or department of health or health commissioners of the town, village or city where such establishment is situated, unless such establishment is situated in a city of the first class, in which case the commissioner of labor shall cause to be served upon the owner, agent or lessee of the building occupied by such establishment a written notice of the omission and directing such owner, agent or lessee to comply with the provisions of this section respecting such wash-rooms and water-closets.

Such owner shall, within fifteen days after the receipt of such notice, cause such wash-rooms and water-closets to be provided.

Lunch-Rooms.—If a lunch-room is provided in a mercantile establishment where females are employed, such lunch-room shall not be next to or adjoining the water-closets, unless permission is first obtained from the board or department of health or health commissioners of the town, village or city where such mercantile establishment is situated, unless such establishment is situated in a city of the first class, in which case such permission must be obtained from the commissioner of labor. Such permission shall be granted unless it appears that proper sanitary conditions do not exist, and it may be revoked at any time by the board or department of health or health commissioners, if it appears that such lunch-room is kept in a manner or in a part of a building injurious to the health of the employees, unless such establishment is situated in a city of the first class in which case said permission may be so revoked by the commissioner of labor.

Seats for Women in Mercantile Establishments.—Chairs, stools or other suitable seats shall be maintained in mercantile

establishments for the use of female employees therein, to the number of at least one seat for every three females employed, and the use thereof by such employees shall be allowed at such times and to such extent as may be necessary for the preservation of their health. If the duties of the female employees, for the use of whom the seats are furnished, are to be principally performed in front of a counter, table, desk or fixture, such seats shall be placed in front thereof; if such duties are to be principally performed behind such counter, table, desk or fixture, such seats shall be placed behind the same.

Employment of Women and Children in Basements.—Women or children shall not be employed or permitted to work in the basement of a mercantile establishment, unless permitted by the board or department of health, or health commissioner of the town, village or city where such mercantile establishment is situated, unless such establishment is situated in a city of the first class, in which case such permission must be obtained from the commissioner of labor. Such permission shall be granted unless it appears that such basement is not sufficiently lighted and ventilated and is not in good sanitary condition.

Enforcement of Article. — Except in cities of the first class the board or department of health or health commissioners of a town, village or city affected by this article shall enforce the same and prosecute all violations thereof. Proceedings to prosecute such violations must be begun within sixty days after the alleged offense was committed. All officers and members of such boards, or department, all health commissioners, inspectors and other persons appointed or designated by such boards, departments or commissioners may visit and inspect, at reasonable hours and when practicable and necessary, all mercantile or other establishments herein specified within the town, village or city for which they are appointed. No person shall interfere with or prevent any such officer from making such visitations and inspections, nor shall he be obstructed or injured by force or otherwise while in the performance of his duties. All persons connected with any such mercantile or other establishment herein specified shall properly answer all questions asked by such officer or inspector in reference to any of the provisions of this article. In cities of the first class the commissioner of labor shall enforce the provisions of this article, and for that purpose he and his subordi-

nates shall possess all powers herein conferred upon town, village, or city boards and departments of health and their commissioners, inspectors, and other officers, except that the board or department of health of said cities of the first class shall continue to issue employment certificates as provided in section one hundred and sixty-three of this chapter.

Copy of Article to be Posted.—A copy of this article shall be posted in a conspicuous place on every floor in each establishment wherein three or more persons are employed who are affected by its provisions.

BUREAU OF MERCANTILE INSPECTION

Mercantile Inspector.—There shall be a bureau of mercantile inspection, which shall be under the immediate charge of a mercantile inspector, but subject to the direction and supervision of the commissioner of labor. The mercantile inspector shall be appointed and be at pleasure removed by the commissioner of labor, and shall receive such annual salary not to exceed two thousand dollars as may be appropriated therefor.

Deputies.—The commissioner of labor may appoint from time to time not more than ten deputy mercantile inspectors, not less than two of whom shall be women, and who may be removed by him at any time.

Prohibited Employment of Children in Street Trades.—No male child under ten, and no girl under sixteen years of age, shall in any city of the first or second class sell or expose or offer for sale newspapers, magazines or periodicals in any street or public place.

Prohibited Employment of Women and Children.—No child under the age of six-

teen years shall be employed or permitted to work in operating or assisting in operating any of the following machines: circular or band saws, woodshapers, woodjointers, planers, sandpaper or wood polishing machinery, picker machines or machines used in picking wool, cotton, hair or any upholstering material; paper lace machines; burnishing machines in any tannery or leather manufactory; job or cylinder printing presses having motive power other than foot; wood-turning or boring machinery; drill presses; metal or paper cutting machines; corner staying machines in paper-box factories; stamping machines used in sheet metal and tinware manufacturing or in washer and nut factories; machines used in making corrugating rolls; steam boilers; dough brakes or cracker machinery of any description; wire or iron straightening machinery; rolling mill machinery, power punches or shears; washing, grinding or mixing machinery, calendar rolls in rubber manufacturing; or laundering machinery. No child under the age of sixteen years shall be employed or permitted to work at adjusting or assisting in adjusting any belt to any machinery; oiling or assisting in oiling, wiping or cleaning machinery; or in any capacity in preparing any composition in which dan-

gerous or poisonous acids are used; or in the manufacture or packing of paints, dry colors, or red or white lead; or in dipping, dyeing, or packing matches; or in the manufacture, packing or storing of powder, dynamite, nitro glycerine, compounds, fuses, or other explosives; or in or about any distillery, brewery, or any other establishment where malt or alcoholic liquors are manufactured, packed, wrapped, or bottled; and no female under the age of sixteen shall be employed or permitted to work in any capacity where such employment compels her to remain standing constantly. No child under the age of sixteen years shall be employed or permitted to have the care, custody or management of or to operate an elevator either for freight or passengers. No person under the age of eighteen years shall be employed or permitted to have the care, custody or management of or to operate an elevator either for freight or passengers running at a speed of over two hundred feet a minute. No male person under eighteen years or woman under twenty-one years of age shall be permitted or directed to clean machinery while in motion. No male child under the age of eighteen years, nor any female, shall be employed in any factory in this State in operating or using any emery,

tripoli, rouge, corundum, stone, carborundum or any abrasive, or emery polishing or buffing wheel, where articles of the baser metals or of iridium are manufactured.

Accommodations for Women in Factories.—In every factory there shall be provided at all times for the use of employees a sufficient supply of clean and pure drinking water. Such water shall be supplied through proper pipe connections with water mains through which is conveyed the water used for domestic purposes, or, from a spring or well or body of pure water; if such drinking water be placed in receptacles in the factory, such receptacles shall be properly covered to prevent contamination and shall be thoroughly cleaned at frequent intervals. In every factory there shall be provided and maintained for the use of employees suitable and convenient wash rooms, adequately equipped with sink and proper water service. Where females are employed, dressing or emergency rooms shall be provided for their use; each such room shall have at least one window opening to the outer air and shall be enclosed by means of solid partitions or walls. In brass and iron foundries suitable provisions shall be made and maintained for drying the working clothes of

persons employed therein. In every factory there shall be provided suitable and convenient water-closets for each sex, in such number as the commissioner of labor may determine. Such water-closets shall be properly screened, lighted, ventilated and kept clean and sanitary; the enclosure of each closet shall be kept clean and sanitary and free from all obscene writing and marking. The water-closets used by females shall be entirely separated from those used by males and the entrances thereto shall be effectively screened. The water-closets shall be maintained inside the factory whenever practicable and in all cases when required by the commissioner of labor.

PROTECTION OF HER PERSON AND MORALS

Protection of a Female Child.—The State endeavors to protect the person of a female child from pollutions and violations by stringent laws providing severe punishments. Until she has reached a certain age a girl is presumed by the law to be incapable of consenting to an act of sexual immorality. Fourteen years is required in this State.

Abduction.—A person who:

1. Takes, receives, employs, harbors or uses, or causes or procures to be taken, received, employed or harbored or used, a female under the age of eighteen years, for the purpose of prostitution; or, not being her husband, for the purpose of sexual intercourse; or, without the consent of her father, mother, guardian or other person having legal charge of her person, for the purpose of marriage; or,

2. Inveigles or entices an unmarried female, of previous chaste character, into a house of ill-fame or of assignation, or elsewhere, for the purpose of prostitution or sexual intercourse; or,

3. Takes or detains a female unlawfully against her will, with the intention to compel her, by force, menace or duress, to marry him, or to marry any other person, or to be defiled; or,

4. Being parent, guardian or other person having legal charge of the person of a female under the age of eighteen years, consents to her taking or detaining by any person for the purpose of prostitution or sexual intercourse;

Is guilty of abduction and punishable by imprisonment for not more than ten years, or by a fine of not more than one thousand dollars, or by both.

Bigamy.—A person who, having a husband or wife living, marries another person, is guilty of bigamy and is punishable by imprisonment in a penitentiary or state prison for not more than five years.

Exceptions.—This law does not extend:

1. To a person whose former husband or wife, has been absent for five years successively then last past, without being known to him or her within that time to be living, and believed by him or her to be dead; or,

2. To a person whose former marriage has been pronounced void, or annulled, or dissolved, by the judgment of a court of

competent jurisdiction, for a cause other than his or her adultery; or,

3. To a person who, being divorced for his or her adultery, has received from the court which pronounced the divorce, permission to marry again; or,

4. To a person whose former husband or wife has been sentenced to imprisonment for life.

Compelling Woman to Marry.—A person who by force, menace or duress, compels a woman against her will to marry him, or to marry any other person, or to be defiled, is punishable by imprisonment for a term not exceeding ten years, or by a fine of not more than one thousand dollars, or by both.

No Conviction on Certain Testimony.—No conviction can be had for compulsory marriage upon the testimony of the female compelled, unsupported by other evidence.

Compulsory Prostitution of Wife.—Any man who by force, fraud, intimidation or threats, places or leaves, or procures any other person to place or leave, his wife in a house of prostitution, or to lead a life of prostitution, shall be guilty of a felony, and upon conviction thereof shall be imprisoned for not more than ten years.

Seduction Under Promise of Marriage.—A person who, under promise of marriage, seduces and has sexual intercourse with an

unmarried female of previous chaste character, is punishable by imprisonment for not more than five years, or by a fine of not more than one thousand dollars or both.

The crime of rape is punishable by imprisonment for not more than twenty years.

Compulsory Prostitution of Women.—1. Any person who shall place any female in the charge or custody of any other person for immoral purposes or in a house of prostitution with intent that she shall live a life of prostitution; or any person who shall compel any female to reside with him or with any other person for immoral purposes, or for the purposes of prostitution, or shall compel any such female to reside in a house of prostitution, or compel her to live a life of prostitution, is punishable by a fine of not less than one thousand dollars, or by imprisonment for not less than one year nor more than three years, or by both such fine and such imprisonment.

2. Any person who shall receive any money or other valuable thing for or on account of placing in a house of prostitution or elsewhere any female for the purpose of causing her to cohabit with any male person or persons to whom she is not married shall be guilty of a misdemeanor.

3. Any person who shall pay any money or other valuable thing to procure any female for the purpose of placing her for immoral purposes in any house of prostitution or elsewhere against her will, shall be fined not less than one thousand dollars nor more than five thousand dollars, and be imprisoned for a period not less than one year, nor more than three years.

4. Every person who shall knowingly receive any money or other valuable thing for or on account of procuring and placing in the custody of another person for immoral purposes any woman, with or without her consent, is punishable by imprisonment not exceeding five years and a fine not exceeding one thousand dollars.

5. No conviction shall be had under this section upon the testimony of the female unless supported by other evidence.

ABORTION

Definition and Punishment of Abortion.—A person who, with intent thereby to procure the miscarriage of a woman, unless the same is necessary to preserve the life of the woman, or of the child with which she is pregnant, either:

1. Prescribes, supplies, or administers to a woman, whether pregnant or not, or advises or causes a woman to take any medicine, drug, or substance; or,

2. Uses, or causes to be used, any instrument or other means,

Is guilty of abortion, and is punishable by imprisonment in a state prison for not more than four years, or in a county jail for not more than one year.

Killing of Child in Attempting Miscarriage.—A pregnant woman, who takes any medicine, drug, or substance, or uses or submits to the use of any instrument or other means, with intent thereby to produce her own miscarriage, unless the same is necessary to preserve her life, or that of the child whereof she is pregnant, is punishable by imprisonment for not less than one year, nor more than four years.

Selling Drugs or Instruments to Procure a Miscarriage.—A person who manufactures, gives or sells an instrument, a medicine or drug, or any other substance, with intent that the same may be unlawfully used in procuring the miscarriage of a woman, is guilty of a felony,

POLICE MATRONS

Police Station Houses for the Detention of Women; How Designated.—The mayor of every city containing a population of twenty-five thousand shall and the mayor of every other city when authorized by a resolution of the common council may designate one or more station houses within his city for the detention and confinement of all women under arrest in such city. Such mayor or board of commissioners of police may at any time designate for such purpose any additional station house or houses, or may revoke the designation of any station house or houses theretofore designated, provided that at least one such station house shall at all times be so designated for such purpose in each city.

Women Under Arrest to Have Separate Accommodations.—It shall be the duty of the boards of commissioners of police in every city, or if there be no board of police, then of the mayor of such city, to provide sufficient accommodations for women held under arrest to keep them separate and apart from the cells, corridors and apart-

ments provided for males under arrest, and to so arrange each station house that no communication can be had between the men and women therein confined, except with the consent of the matrons and officers in charge of such station house.

Proceeding in Case of Arrest of Women.—Whenever a woman is arrested and taken to a police station, to which a matron is attached, it shall be the duty of the officer in charge of the station to cause such matron to be summoned forthwith, and whenever, in any city in which a police matron has been appointed, a woman is arrested and taken to a station house to which no matron is attached, it shall be the duty of such officer to cause such woman to be removed as soon as possible to the nearest station house within such city to which a police matron is attached. No such separate confinement nor any such removal of any woman shall operate to take from any court any jurisdiction it has.

SUPPORT OF BASTARDS

Penalty for Removing Mother of Bastard; How Supported After Removal.—If the mother of any bastard, or of any child likely to be born a bastard, shall be removed, brought or enticed into any county, city or town from any other county, city or town of this State, for the purpose of avoiding the charge of such bastard or child upon the county, city or town from which she shall have been brought or enticed to remove, the same penalties shall be imposed on every such person so bringing, removing or enticing such mother to remove, as are provided is the case of the fraudulent removal of a poor person. Such mother, if unable to support herself, shall be supported during her confinement and recovery therefrom, and her child shall be supported, by the county superintendents of the poor of the county where she shall be, if no provision be made by the father of such child.

Mother and Child Poor Persons; Proceedings Against County or Town from Which She Was Removed.—Such mother and her child shall, in all respects, be

deemed poor persons; and the same proceedings may be had by the county superintendents to charge the town, city or county from which she was removed or enticed, for the expense of supporting her and her child, as are provided in the case of poor persons fraudulently or clandestinely removed; and an action may be maintained in the same manner for said expenses and for all expenses properly incurred in apprehending the father of such child, or in seeking to compel its support by such father or its mother.

Mother and Bastard; How to be Supported.—The mother of every bastard, who shall be unable to support herself, during her confinement and recovery therefrom, and every bastard, after it is born, shall be supported as other poor persons are required to be supported by the provisions of this chapter, at the expense of the city or town where such bastard shall be born, if the mother have a legal settlement in such city or town, and if it be required to support its own poor; if the mother have a settlement in any other city or town of the same county, which is required to support its own poor, then at the expense of such other city or town; in all other cases, they shall be supported at the expense of the county where such bastard shall be born.

Mother and Child Not to be Removed Without Her Consent.—The mother and her child shall not be removed from any city or town to any other city or town in the same county nor from one county to any other county, in any case whatever, unless voluntarily taken to the county, city or town liable for their support, by the county superintendents of such county or the overseers of the poor of such city or town.

Overseers to Notify Superintendents of Cases of Bastardy; When County Chargeable.—The overseers of the poor of any city or town where a woman shall be pregnant with a child, likely to be born a bastard, or where a bastard shall be born, which child or bastard shall be chargeable, or likely to become chargeable to the county, shall, immediately on receiving information of such fact, give notice thereof to the county superintendents, or one of them.

Duty of Superintendents to Provide for Mother and Child.—The county superintendents shall provide for the support of such bastard and its mother, in the same manner as for the poor of such county.

Until Taken Charge of by Superintendents, to be Supported by Overseers.—Until the county superintendents take charge of

and provide for the support of such bastard and its mother so chargeable to the county, the overseers of the poor of the city or town shall maintain and provide for them; and for that purpose, the same proceedings shall be had as for the support of a poor person chargeable to the county, who can not be conveniently removed to the county almshouse.

Overseers of Towns to Support Bastard and Mother, Whether Chargeable or Not.—Where a woman shall be pregnant with a child likely to be born a bastard or to become chargeable to a city or town, or where a bastard shall be born chargeable, or likely to become chargeable to a city or town, the overseers of the poor of the city or town where such bastard shall be born, or likely to be born, whether the mother have a legal settlement therein or not, shall provide for the support of such child and the sustenance of its mother during her confinement and recovery therefrom, in the same manner as they are authorized by this chapter to provide for and support the poor of their city or town.

Moneys Received by Overseers from Parents of Bastard, How Applied and Accounted for.—Where any money shall be paid to any overseer, pursuant to the order of any two justices, by any putative father,

or by the mother of any bastard, the overseers may expend the same directly, in the support of such child, and the sustenance of its mother as aforesaid, without paying the same into the county treasury. They shall annually account, on oath, to the board of town auditors, or to the proper auditing board of a city, at the same time that other town or city officers are required to account for expenditures of all moneys so received by them, and shall pay over the balance in their hands, and under like penalties, as are provided by this chapter, in respect to the poor moneys in their hands.

When Moneys Received on Account of Bastard Chargeable to County; How to be Disposed of.—All moneys which shall be ordered to be paid by the putative father, or by the mother of a bastard chargeable to any county, shall be collected for the benefit of such county; and all overseers of the poor, superintendents, sheriffs, and other officers, shall within fifteen days after the receipt of any such moneys, pay the same into the county treasury. Any officer neglecting to make such payment shall be liable to an action by and in the name of the county, for all moneys so received and withheld, with interest from the time of receipt, at the rate of ten per centum; and

shall forfeit a sum equal to that so withheld, to be sued for and recovered by and in the name of the county.

Disputes Concerning Settlement of Bastard; How Determined.—When a dispute shall arise concerning the legal settlement of the mother of a bastard, or of a child born or likely to be born a bastard, in any city or town, the same shall be determined by the county superintendents of the poor, upon a hearing of the parties interested, in the same manner and with the same effect as they are authorized to determine the settlement of a poor person under this chapter.

Proceedings When Bastard is Chargeable to Another Town.—When a bastard shall be born, or be likely to be born in a town or city, when the legal settlement of the mother is in another town or city of the same county, which is required by law to support its own poor, the overseers of the poor of the town or city where such bastard shall be born, or be likely to be born, shall give the like notice to the overseers of the town or city where the mother's settlement may be, as is required in the case of a person becoming a poor person, under the like circumstances, and the same proceedings shall be had, in all

respects, to determine the liability of such town or city as in the case of poor persons.

The overseers of the town or city to which the mother of such bastard belongs may, before the confinement of such mother, or at any time after the expiration of two months after her delivery, if her situation will permit it, take and support such mother and her child.

If they omit to do so, and fail to obtain the determination of the county superintendents in their favor on the question of settlement, the town or city to which the mother belongs shall be liable to pay all the expenses of the support of such bastard, and of its mother during her confinement and recovery therefrom; which expenses, after being allowed by the county superintendents, shall be assessed, together with the lawful interest on the moneys expended, on the town or city to which such mother belongs, and shall be collected in the same manner as provided for poor persons supported under the same circumstances, and the moneys so collected shall be paid to the county treasurer, for the benefit of, and to be credited to, the town which incurred such expenses.

Mode of Ascertaining Sum to be Allowed for Support of Bastard.—When any town

to convey to said institution persons committed thereto, and when so signed, attested and delivered, may be executed by such officer or agent in any county of this State. But such warrant, before being so executed, must be indorsed by a magistrate of the city, town or county in which the person sought to be arrested may be found.

Anchorage at Elmira

By-Laws.—The Anchorage, a corporation created under the general laws of this State for the promotion of Christian work and the improvement of the spiritual and moral condition of women who shall come under its care, and having its location in the city of Elmira, may make by-laws not inconsistent with law, providing for its custody, with or without confinement in its buildings in such city, of women committed to it in pursuance of this article; for the proper care and maintenance, the disciplinary and reformative treatment and probationary release on parole of such women while so in its custody; and for such administration of its affairs, as to its trustees may seem desirable, by an executive committee to be composed of at least five of its trustees.

Approval by State Board of Charities; Certificate.—The by-laws of such corporation may be submitted to the state board of charities for approval. The state board of charities may make and annex to a copy of such by-laws its certificate in writing, dated the day when made, to the effect that it approves such by-laws and that one or more members of such board within thirty days before the date of such certificate personally inspected the buildings and management of such corporation and that such board is satisfied that such corporation is properly prepared to and will for at least one year thereafter receive into its custody and properly care for women committed to it in pursuance of this article.

Inspection by State Board of Charities.—If the state board of charities shall make such certificate and any women shall be committed to the Anchorage in pursuance of this article, one or more of the members of such board shall, so long as any women so committed shall remain in the custody thereof, annually within sixty days before the expiration of each year after the date of such certificate, personally inspect the buildings and management of such corporation; and such board shall after such inspection make a certificate in

writing dated as of the day upon which it is made either substantially to the same effect as the first certificate or substantially to the contrary effect; and the certificate so made shall be filed by such board in each county clerk's office in which the certificate of the last previous year shall have been filed. And after the filing of such certificate substantially contrary to such first certificate no commitments shall be made to the Anchorage by virtue of this article.

Commitments by Recorder of Elmira.— During the period of one year after the date of the first certificate of the state board of charities filed in the clerk's office of Chemung county and during each year after the date of the filing of each subsequent certificate of the state board of charities substantially to the same effect as the first certificate, the recorder of the city of Elmira shall commit any woman between sixteen and thirty years of age convicted by him or by the court of special sessions held by him of being a prostitute or of frequenting any house of ill-fame, or of disorderly conduct or of being a disorderly person, for the first offense; and may commit any woman actually or apparently under twenty years of age, convicted by the court of special sessions held

by such recorder of any misdemeanor, to the Anchorage, to be there detained subject to its by-laws so approved by the State board of charities and filed.

Commitments from Other Counties.—Any magistrate in any other county in which a certified copy of such first certificate of the state board of charities is authorized to be filed may, if a certified copy of such first certificate or of any subsequent certificate of the state board of charities to the same effect shall be filed in such county during the period of one year after the date of any such certificate, commit any woman between sixteen and thirty years of age convicted by such magistrate or by a court of special sessions held by such magistrate of prostitution or of frequenting any house of ill-fame, or of disorderly conduct or of being a disorderly person for the first offense; and any woman actually or apparently under twenty-one years of age; and any woman convicted by the court of special sessions held by such magistrate of a misdemeanor, to the Anchorage to be there detained subject to the rules and regulations of the state board of charities.

Limitation of Term.—No person committed to the Anchorage in pursuance of this article shall be deprived of her liberty

by virtue of such commitment for a longer period than such person might have been committed to a county jail upon conviction of the offense of which the conviction was had by virtue of which the commitment was made.

Support of Inmates.—The board of supervisors of any county from which commitments are authorized to be made to the Anchorage by virtue of this article may contract with the Anchorage for the support of women committed to the Anchorage from such county and the amount payable to the Anchorage, in pursuance of such contract shall be a county charge upon such county.

Change of By-Laws; Disposition of Inmates on Adverse Certificate.—After the state board of charities shall have approved the by-laws of the Anchorage, such by-laws shall not thereafter be changed except with the approval of such board. If the state board of charities shall at any time make a certificate substantially contrary to the effect of such first certificate made by it, such board of charities shall immediately thereupon cause each woman then in the custody of the Anchorage by virtue of this article to be taken before a magistrate or a court of special sessions of the town, city or village from which

such woman was committed, and such magistrate or court may thereupon discharge such woman from such commitment or may recommit such woman to the county jail of the county for a period which together with the period since the date of the first commitment shall not exceed the total period for which such woman might have been committed to jail upon her original conviction by virtue of which her commitment to the Anchorage was made.

Detentions and Rearrests in Cases of Escape.—The executive committee of said Anchorage shall have power to cause to be detained therein, under such proper rules and regulations as the board of trustees shall provide, any female so committed thereto according to the terms of said sentence and commitment, and to cause the rearrest in any county of this State, and return to said Anchorage, of any person who may have escaped therefrom or been conditionally discharged therefrom, as herein provided, and in case of such rearrest and return, to detain her as aforesaid from the time of such return, for a time equal to the unexpired portion of her time at the time of her escape or conditional discharge.

Conveyance of Women Committed.—The executive committee shall employ suitable persons to convey from the place of conviction to the said Anchorage all women duly committed thereto, and said persons shall have the power and authority of deputy sheriffs. All expenses of such conveying shall be paid by the treasurer of the board of said Anchorage.

Who May Rearrest.—In any case of the escape of any inmate from said Anchorage, any person duly employed by said executive committee to convey to said Anchorage women committed thereto, shall have power to arrest such escaped inmate in any county in this state without a warrant, and forthwith to convey her to said Anchorage; and any magistrate shall have power to cause any such escaped inmate to be arrested and held in custody until she can be removed to said Anchorage, as in case of her first commitment thereto.

Conditional Discharge. — Any person committed to the Anchorage may be discharged therefrom conditionally or otherwise in the discretion of the executive committee, whenever in the judgment of said committee there is satisfactory evidence of the reformation of such person, provided that in no case of sentence for

a certain definite period shall commutation or abridgment of sentence be made for more than one-third of the period specified in the warrant of commitment without the concurrence in writing of the committing magistrate, or of his successor in office.

Rearrest After Conditional Discharge.—Any person having been conditionally discharged from said Anchorage may be arrested and returned thereto upon the warrant of the executive committee of said Anchorage, issued by order of said committee, signed and attested by the chairman of said committee, which warrant shall briefly state the reason for such arrest and return, and shall be directed and delivered to any person employed by said executive committee to convey to said Anchorage persons committed thereto, and when so signed, attested and delivered may be executed by such person in any county of this State.

Papers Furnished by Committing Magistrate.—It shall be the duty of every justice of the peace, police justice or other magistrate or court committing any woman under authority given by this article immediately to notify the superintendent of said Anchorage of such conviction, and to cause a record to be kept of

the name, age, birthplace, occupation, previous commitment, if any, and for what offenses (and last place of residence of such woman or women) so committed by them together with the particulars of the offense charged. A copy of said record shall be transmitted with the warrant of commitment to the superintendent of said Anchorage, who shall enter and keep in a book of record all these and such other facts as are by law required concerning inmates of poorhouses.

Determination as to Age.—Any court or magistrate authorized to commit any female to said Anchorage shall before so committing her inquire into and for the purpose of the case determine the age of such female at the time of such commitment, and her age as so determined shall be stated in the warrant; and when the year only is stated, it shall be considered as expiring on the day on which the warrant is dated and the statement of age of such female so made in said warrant of commitment shall be conclusive evidence as to the age of said female in any action to recover damages for her detention or imprisonment under said warrant, and shall be presumptive evidence of the age of such female in any other inquiry, action or proceeding relating to such detention.

Removal and Resentence of Insubordinate Inmates.—Whenever any person committed to such institution by a magistrate, court or justice of the peace, as provided in this article, shall by reason of insubordination or other improper conduct, prove, in the judgment of the executive committee of said institution, to be an improper subject for care in said Anchorage, it shall be the duty of the executive committee of said Anchorage thereupon to cause the return of such female to the county from which she was committed in the custody of one of the persons employed by said executive committee to convey to said Anchorage women committed thereto, who shall deliver her into the custody of the sheriff of such county, to be by said sheriff taken before the court or magistrate which committed her to said Anchorage, or some other court or magistrate having equal jurisdiction in such county, to be by such court or magistrate resentenced for the offense for which she was committed to said Anchorage, and dealt with in all respects as though she had not been committed to said Anchorage, and in such case all costs and expenses incurred and paid by said board of trustees on account of such female so returned shall be a county charge upon such county to be levied and

collected as other taxes in said county and paid over to said board of trustees and credited to the account to which such expenses were charged.

Disposition of Children of Women so Committed.—In case any woman committed to said Anchorage at the time of such commitment shall be the mother of a nursing child in her care under one year of age, or be pregnant with child which shall be born after such commitment, such child may accompany its mother and remain in said Anchorage until such time as in the opinion of the board of trustees such child can properly be removed therefrom and suitably provided for elsewhere.

Powers of Superintendent.—For the safe management and discipline of said Anchorage the superintendent thereof is hereby given and is required to exercise, in regard to women committed to said Anchorage, the same power as jail keepers and constables have in regard to persons committed or held in custody of said officers.

Freedom of Worship.—Nothing herein contained shall interfere with the right of the freedom of worship of any inmate confined within said institution, as provided by the constitution of the State of New York.

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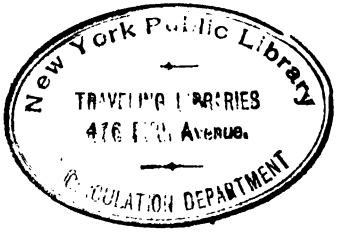
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